

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



879

JOINT APPENDIX

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**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 20,858

AETNA CASUALTY AND SURETY COMPANY,  
*Appellant,*

v.

WALTER OGUS, INC.  
and  
HARTFORD ACCIDENT AND  
INDEMNITY COMPANY,

*Appellees.*

No. 20,859

AETNA CASUALTY AND SURETY COMPANY,  
*Appellant,*

v.

WALTER OGUS, INC.  
and  
HARTFORD ACCIDENT AND  
INDEMNITY COMPANY,

*Appellees.*

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals  
for the District of Columbia Circuit

FILED JUN 8 1967

*Nathan J. Paulson*  
CLERK





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**JOINT APPENDIX**

[Filed Aug. 26, 1959]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ISABEL C. FENTON  
4411 Reno Road, N. W.  
Washington, D. C.,  
Plaintiff

vs.

WALTER S. CHARRON  
Also known as Walter S. Sharon  
2920 Pennsylvania Ave., S.E.  
Washington, D. C.

MARIE L. CHARRON  
2920 Pennsylvania Ave., S.E.  
Washington, D.C.

MICHAEL M. ABRAMS  
930 - 26th Street, N.W.  
Washington, D. C.

EDWARD W. DREYFUSS  
1019 - 15th Street, N.W.  
Washington, D. C.

NICHOLAS C. MANDRAGOS  
Route 1, Box 40  
Brandywine, Maryland, and

ELMER STOKES  
600 Baltimore Road  
Rockville, Maryland,  
Defendants.

Civil Action No. 2364-59

**COMPLAINT FOR DAMAGES FOR NEGLIGENCE**

1. Jurisdiction over the above-entitled cause is conferred upon this Court by the provisions of Sections 305 and 306, Title 11, D. C. Code, 1951 Edition.

2. The plaintiff is the owner of real estate situated in the District of Columbia, described as Lot 807 in Square 86, improved by premises 1917 I Street, N.W.; that prior to the arising of the cause of action complained of herein, the said premises were in a good and tenantable condition for renting as office space and said premises had been rented to tenants for use as office space for a period of several years past.

3. The defendants, Walter S. Charron and Marie L. Charron, are the owners of the adjoining lot to the west of plaintiff's lot as aforesaid, described as Lot 29 in Square 86; that prior to May, 1959, said lot was improved by premises known as 1919 I Street, N.W.

4. The Surveyor of the District of Columbia has ascertained and certified that a party wall occupies the land along the west line of plaintiff's lot and the east line of Lot 29 owned by the defendants, Walter S. Charron and Marie L. Charron.

5. In May, 1959, the defendants, Walter S. Charron and Marie L. Charron razed the building then located on said Lot 29, following which the said defendants, through their agents and employees, namely, Edmund W. Dreyfuss, Architect, and Nicholas C. Mandragos, Engineer, filed plans and specifications with the District of Columbia Government for the construction of a new building to be erected on said lot, using the aforesaid party wall as the east wall thereof. That upon issuance of the permit by the District of Columbia Government for the construction of said building, the defendant owners of Lot 29, their agents and employees, including the Architect and Engineer aforesaid, and the defendants, Michael M. Abrams, Contractor, and Elmer Stokes, Excavator, commenced construction operations with reference to said new building.

6. That on or about July 27, 1959, the defendants wantonly and negligently caused excavations to be made on said Lot 29 considerably below the bottom level of said party wall, and further, the said defendants wantonly and negligently caused other excavations and holes to be dug at numerous places directly under the party wall and on plaintiff's

property, all of which was done without her knowledge and consent; that also, the said defendants wantonly and negligently failed to provide adequate underpinning, support, lateral bracing, shoring and protection for the said party wall and for plaintiff's building and adjoining land, all of which wanton and negligent acts and omissions of the defendants were in violation of the Building Code of the District of Columbia then in force and effect.

7. The defendants were required to notify the Director, Department of Licenses and Inspection of the District of Columbia Government, concerning the underpinning for said party wall and to obtain approval as to the manner of doing such work, but the said defendants wantonly and negligently failed to do so, all in violation of the provisions of the aforesaid Building Code of the District of Columbia then in force and effect.

8. That the defendant owners of said Lot 29, and the defendants, Edmund W. Dreyfuss, Architect and Nicholas C. Mandragos, Engineer, having provided in the said plans and specifications for the new building that the aforesaid party wall was to be used as the east wall thereof, were further negligent in failing to investigate the thickness and the existing condition of said party wall and of the need for support thereof, and in failing to provide in said plans and specifications for the adequate support of said party wall, and in supervising or in failing to supervise the excavation and construction of said new building, all in violation of their duty to protect the rights and property of the plaintiff.

9. That as a result of the acts and things herein alleged, plaintiff's building and property have been severely and permanently damaged, and the said building and property cannot be restored to their previous condition. As a further result, the plaintiff's property has been rendered untenable, and, on or about July 28, 1959, the District of Columbia Government ordered the plaintiff's tenant, who occupied the entire building, to vacate the same. Thereafter on July 31, 1959, the said tenant notified plaintiff in writing that because of the untenable con-

PAGE 4:

dition existing in said building that it was being vacated and that rent would not thereafter be paid, effective August 1, 1959.

10. That because of the acts and things herein alleged the plaintiff's building and property have been permanently damaged, by reason of the loss and destruction to her building, and in the lessening of the usefulness and value of said building, and plaintiff is now being and will continue to be deprived of the rents therefrom over a long period of time, all of which has damaged plaintiff in the sum of \$75,000.00.

WHEREFORE, plaintiff demands judgment against the defendants in the sum of \$75,000.00, besides interest and costs.

/s/ Clarence G. Pechacek

/s/ Joseph A. Rafferty, Jr.  
206 Southern Building  
Washington 5, D. C.  
Attorneys for Plaintiff

Plaintiff demands a jury trial.

/s/ Clarence G. Pechacek

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[Filed Dec. 11, 1959]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ROBERT ASH  
1921 Eye Street, N.W.  
Washington, D. C.,  
Plaintiff

vs.

WALTER S. CHARRON  
Also known as Walter S. Sharon  
2920 Pennsylvania Ave., S.E.  
Washington, D. C.

MARIE L. CHARRON  
2920 Pennsylvania Ave., S.E..  
Washington, D.C.

Civil Action No. 3506-'59

Lesmark, Inc.  
A Corporation  
1360 Peabody Street, N.W.  
Washington, D. C.

and

EDMUND W. DREYFUSS  
1019 Fifteenth Street, N.W.  
Washington, D. C.,  
Defendants

COMPLAINT FOR INJUNCTION AND DAMAGES

1. Jurisdiction over the above-entitled cause is conferred upon this Court by the provisions of Sections 305 and 306, Title 11, D. C. Code 1951 Edition.

2. The plaintiff is the owner of real estate situated in the District of Columbia, described as Lot 30 in Square 86, improved by premises 1921 Eye Street, N.W.; that prior to the arising of this cause of action complained of herein, the said premises were in a good and tenantable

condition for use as office space and said premises have been used by the plaintiff for such purpose for a period of several years past.

3. The defendants, Walter S. Charron and Marie L. Charron are owners of the adjoining lot to the east of plaintiff's lot as aforesaid described as Lot 29 in Square 86; that prior to May, 1959 said lot was improved by premises known as 1919 Eye Street, N.W.

4. The Surveyor of the District of Columbia has ascertained and certified that the party wall occupies the land along the east line of plaintiff's lot and the west line of said Lot 29 which is owned by the defendants, Walter S. Charron and Marie L. Charron.

5. In May, 1959 the defendants, Walter S. Charron and Marie L. Charron razed the building then located on said Lot 29, following which the said defendants through their agents and employees, namely, Edmund W. Dreyfuss, Architect, filed plans and specifications with the District of Columbia Government for the construction of a new building to be erected on said lot, using the aforesaid party wall as the west wall thereof. That upon issuance of the permit by the District of Columbia Government for the construction of said building, the defendant owners of Lot 29, their agents and employees, including the Architect as aforesaid, and the defendant, Lesmark, Inc., Contractor, commenced construction operations with reference to said new building.

6. That on or about July 27, 1959 the defendants wantonly and negligently caused excavations to be made on said Lot 29 considerably below the bottom level of said party wall, and further, the said defendants wantonly and negligently caused other excavations and holes to be dug at numerous places directly under the party wall and on plaintiff's property, all of which was done without his knowledge and consent; that also the said defendants wantonly and negligently failed to provide adequate underpinning, support, lateral bracing, shoring and protection for the said party wall and for plaintiff's building and adjoining land, all of which wanton and negligent acts and omissions of the defendants were

in violation of the Building Code of the District of Columbia then in force and effect.

7. The defendants were required to notify the Director, Department of Licenses and Inspection of the District of Columbia Government concerning the underpinning for said party wall and to obtain approval as to the manner of doing such work, but the said defendants wantonly and negligently failed to do so, all in violation of the provisions of the aforesaid Building Code of the District of Columbia then in force and effect.

8. That as a result of the acts and things herein alleged, plaintiff's building and property have been severely and permanently damaged, which said damage is in the sum of \$12,000.00.

WHEREFORE, plaintiff demands judgment against the defendants in the sum of \$12,000.00 besides interest and costs.

/s/ Clarence G. Pechacek

/s/ Joseph A. Rafferty, Jr.

Attorneys for Plaintiff

Plaintiff demands a jury trial.

/s/ Clarence G. Pechacek

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[Filed December 15, 1959]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ISABEL C. FENTON,  
Plaintiff,

v.

WALTER S. CHARRON  
MARIE L. CHARRON  
EDMUND W. DREYFUSS  
NICHOLAS C. MANDRAGOS  
ELMER STOKES

Defendants,

Civil Action  
No. 2364-59

and

LESMARK, INC., a Corporation  
Defendant and  
Third-Party Plaintiff

v.

HARRIS & OGUS, INC., a Corporation  
Third-Party Defendant

**THIRD PARTY COMPLAINT OF LESMARK, INC.  
HARRIS & OGUS, INC.**

1. Plaintiff Isabel C. Fenton has filed against defendant Lesmark, Inc., a complaint, a copy of which is attached hereto as Exhibit "B".
2. Said complaint in substance alleges that defendant Lesmark, Inc., as a contractor wantonly and negligently caused certain excavations to be made on a lot adjacent to the premises owned by the plain-

tiff and at numerous places under the party wall and on plaintiff's property without adequate underpinning, support, bracing and shoring; that as a result plaintiff's building and property were severely and permanently damaged, all to plaintiff's damage in the sum of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00).

3. That third-party defendant Harris & Ogus, Inc., is engaged in the business of agent and broker for numerous insurance companies qualified to do business in the District of Columbia, and as such agreed to secure insurance for said defendant and third-party plaintiff Lesmark, Inc., which would pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury or injury to or destruction of property, including the loss of use thereof, caused by accident; said insurance was to provide coverage to the extent of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for property damage and was to include the defense of any suit against the insured alleging such damage and to pay all costs incurred by the insured.

4. That, on, to wit, February 11, 1959, said defendant and third-party plaintiff Lesmark, Inc., was advised by third-party defendant, Harris & Ogus, Inc., that such insurance had been secured with the Hartford Accident & Indemnity Company; and in reliance thereon defendant and third-party plaintiff Lesmark, Inc., secured no other insurance coverage and proceeded with the construction of the building at 1919 Eye Street, N.W.

5. That upon receipt of the complaint filed herein defendant Lesmark, Inc., forwarded said complaint to said Hartford Accident & Indemnity Company, which complaint was returned to said defendant Lesmark, Inc., with a letter from said Hartford Accident & Indemnity Company stating that it had no policy of insurance issued to said defendant Lesmark, Inc., providing for property damage in any form.

6. That third-party defendant Harris & Ogus, Inc., by its failure to secure such insurance coverage has caused defendant Lesmark, Inc.,



to incur substantial expense to defend the pending litigation and in the event a judgment is secured against said defendant Lesmark, Inc., in said litigation, defendant Lesmark, Inc., will be damaged in whatever amount is secured as a judgment against it.

WHEREFORE, defendant and third-party plaintiff Lesmark, Inc., demands judgment against third-party defendant Harris & Ogus, Inc., for all sums that may be adjudged against defendant Lesmark, Inc., in favor of plaintiff Isabel C. Fenton, plus costs and reasonable attorney's fees.

Samuel Barker  
Attorney for Third-Party Plaintiff  
1001 Connecticut Avenue, N.W.  
Washington 6, D. C.

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[Filed Jan. 8, 1960]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ROBERT ASH,  
Plaintiff,

v.

WALTER S. CHARRON  
Also known as Walter S. Sharon

MARIE L. CHARRON

EDMUND W. DREYFUSS

Defendants

Civil Action No.  
No. 3506-59

and

LESMARK, INC.,  
a Corporation

Defendant and  
Third-Party Plaintiff

v.

HARRIS & OGUS, INC.  
A Corporation

Third Party Defendant

THIRD-PARTY COMPLAINT OF LESMARK, INC.  
v. HARRIS & OGUS, INC.

1. Plaintiff Robert Ash has filed against defendant Lesmark, Inc.,  
a complaint, a copy of which is attached hereto as Exhibit "B".

2. Said complaint in substance alleges that defendant Lesmark, Inc., as a contractor wantonly and negligently caused certain excavations to be made on a lot adjacent to the premises owned by the plaintiff and at numerous places under the party wall and on plaintiff's property without adequate underpinning, support, bracing and shoring; that as a result plaintiff's building and property were severely and permanently damaged, all to plaintiff's damage in the sum of TWELVE THOUSAND DOLLARS (\$12,000.00).

3. That third-party defendant Harris & Ogus, Inc., is engaged in the business of agent and broker for numerous insurance companies qualified to do business in the District of Columbia, and as such agreed to secure insurance for said defendant and third-party plaintiff Lesmark, Inc., which would pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury or injury to or destruction of property, including the loss of use thereof, caused by accident; said insurance was to provide coverage to the extent of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for property damage and was to include the defense of any suit against the insured alleging such damage and to pay all costs incurred by the insured.

4. That, on, to wit, February 11, 1959, said defendant and third-party plaintiff Lesmark, Inc., was advised by third-party defendant, Harris & Ogus, Inc., that such insurance had been secured with the Hartford Accident & Indemnity Company; and in reliance thereon defendant and third-party plaintiff Lesmark, Inc., secured no other insurance coverage and proceeded with the construction of the building at 1919 Eye Street, N.W.

5. That upon receipt of the complaint filed herein defendant Lesmark, Inc., forwarded said complaint to said Hartford Accident & Indemnity Company, which complaint was returned to said defendant Lesmark, Inc., with a letter from said Hartford Accident & Indemnity Com-

pany stating that it had no policy of insurance issued to said defendant Lesmark, Inc., providing for property damage in any form.

6. That third-party defendant Harris & Ogus, Inc., by its failure to secure such insurance coverage has caused defendant Lesmark, Inc., to incur substantial expense to defend the pending litigation and in the event a judgment is secured against said defendant Lesmark, Inc., in said litigation, defendant Lesmark, Inc., will be damaged in whatever amount is secured as a judgment against it.

WHEREFORE, defendant and third-party plaintiff Lesmark, Inc., demands judgment against third-party defendant Harris & Ogus, Inc., for all sums that may be adjudged against defendant Lesmark, Inc., in favor of plaintiff Robert Ash, plus costs and reasonable attorney's fees.

/s/ Samuel Barker

[Filed April 19, 1959]

**ANSWER OF THIRD PARTY DEFENDANT,  
HARRIS & OGUS, INC.  
(No. 2364-59)**

First Defense

The third party complaint fails to state a cause of action against this third party defendant upon which relief can be granted.

Second Defense

The third party defendant admits being engaged in the insurance business and as a general agent of the Hartford Accident & Indemnity Company; admits being requested by the third party plaintiffs to secure property damage coverage on the then existing Hartford Accident & Indemnity Company comprehensive general liability policy No. 42 MCS 601753; admits placing this order with the Hartford Accident & Indemnity Company; admits advising third party plaintiff, Lesmark, Inc., that he was then bound upon this additional property damage coverage in accordance with a general agent's binding authority. The third party defendant can neither admit nor deny the allegations contained in Paragraphs 2 and 5 of said third party complaint; and denies each and every other allegation contained in said third party complaint as pertains to this third party defendant not specifically answered herein.

GALIHER & STEWART

By \_\_\_\_\_  
Frank J. Martell

[Certificate of Service, 18 Apr. 1960]

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[Filed Feb. 12, 1960]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ROBERT ASH  
1921 Eye Street, N.W.  
Washington, D. C.  
Plaintiff

vs.

Civil Action No. 3506-59

WALTER S. CHARRON  
Also known as Walter S. Sharon  
2920 Pennsylvania Avenue, S.E.  
Washington, D. C.

MARIE L. CHARRON  
2920 Pennsylvania Avenue, S.E.  
Washington, D. C.

EDMUND W. DREYFUSS  
1019 Fifteenth Street, N.W.  
Washington, D. C.  
Defendants

and

LESMARK, INC.  
A Corporation  
1360 Peabody Street, N.W.  
Washington, D. C.  
Defendant and  
Third Party Plaintiff

vs.

HARRIS & OGUS, INC.  
A Corporation  
1420 K Street, N.W.  
Washington, D. C.  
Third Party Defendant  
and Fourth Party Plaintiff

vs.

HARTFORD ACCIDENT & INDEMNITY  
COMPANY  
A Corporation  
1000 Vermont Avenue, N. W.  
Washington, D. C.  
Fourth Party Defendant

**ANSWER OF THIRD PARTY DEFENDANT,  
HARRIS & OGUS, INC.  
(No. 3506-59)**

First Defense

The Third Party Complaint fails to state a cause of action against this third party defendant upon which relief can be granted.

Second Defense

The third party defendant admits being engaged in the insurance business and as a general agent of the Hartford Accident & Indemnity Company; admits being requested by the third party plaintiff to secure property damage coverage on the then existing Hartford Accident & Indemnity comprehensive general liability policy No. 42 MCS 601753; admits placing this order with the Hartford Accident & Indemnity Company; admits advising third party plaintiff, Lesmark, Inc., that it was then bound upon this additional property damage coverage in accordance with a general agent's binding authority. The third party defendant can neither admit nor deny the allegations contained in Paragraphs 2 and 5 of said third party complaint; and denies each and every other allegation contained in said third party complaint as pertains to this third party defendant not specifically answered herein.

GALIHER & STEWART

By

Frank J. Martell

Attorneys for Third Party  
Defendant and Fourth Party  
Plaintiff

---

[Filed Feb. 17, 1960]

**FOURTH PARTY COMPLAINT OF HARRIS & OGUS, INC.  
v. HARTFORD ACCIDENT & INDEMNITY COMPANY  
(No. 2364-59)**

1. Plaintiff herein, Robert Ash, has filed against defendants Walter S. Charron, Marie L. Charron, Edmund W. Dreyfuss, and Lesmark, Inc., a corporation, a complaint for damages, copy of which is attached hereto and marked as Exhibit "B".

2. Said complaint, in substance, alleges that these defendants, including defendant Lesmark, Inc., as a contractor, wantonly and negligently caused certain excavations to be made on a lot adjacent to premises owned by the plaintiff and that as a result plaintiff's building and property were damaged.

3. Defendant, Lesmark, Inc., a corporation, has filed a third party complaint against third party defendant, Harris & Ogus, Inc., a corporation, alleging that on or about February 11, 1959, said third party defendant as agent of the Hartford Accident & Indemnity Company, a corporation, failed to secure insurance for said defendant and third party plaintiff Lesmark, Inc., which would protect said defendant and third party plaintiff Lesmark, Inc., against payment of any sums which said defendant and third party plaintiff may become legally obligated to pay as damages as a result of bodily injury or injury to, or destruction of property caused by accident. That the said third party complaint further alleges that on or about February 11, 1959, said third party defendant, Harris & Ogus, Inc., as agent for the aforesaid Hartford Accident & Indemnity Company, a corporation, has placed with the aforesaid Hartford Accident & Indemnity Company, a corporation, an order for said policy of insurance as referred to above, and had so advised

said defendant and third party plaintiff, Lesmark, Inc., that such insurance was then and there in full force and effect; and that subsequent to July 27, 1959, the aforesaid fourth party defendant, Hartford Accident & Indemnity Company, a corporation, had denied to defendant and third party plaintiff, Lesmark, Inc., the protection of said policy of insurance, alleging that no such insurance was ever in force and effect. A copy of said third party complaint is attached hereto and marked as Exhibit "C".

4. That if the allegations of the original complaint and third party complaint are established, and that the said fourth party defendant, Hartford Accident & Indemnity Co., a corporation, had in fact issued no policy of insurance to defendant and third party plaintiff, Lesmark, Inc., a corporation, then said fourth party defendant, Hartford Accident & Indemnity Company, a corporation, breached its contract with third party defendant and fourth party plaintiff, Harris & Ogus, Inc., or the failure to issue said policy of insurance was the result of the carelessness and negligence of the fourth party defendant, Hartford Accident & Indemnity Company, a corporation, which breach of contract and carelessness and negligence has caused the aforesaid third party defendant and fourth party plaintiff, Harris & Ogus, Inc., to be named as a third party defendant in this action.

5. That said third party defendant and fourth party plaintiff, Harris & Ogus, Inc., may incur substantial expense to defend this pending litigation and in the event a judgment is secured against said third party defendant and fourth party plaintiff, Harris & Ogus, Inc., in said litigation, third party defendant and fourth party plaintiff, Harris & Ogus, Inc., will be damaged in whatever amount is secured as a judgment against it, plus costs of defense and attorneys' fees.

WHEREFORE, third party defendant and fourth party plaintiff, Harris & Ogus, Inc., demands judgment of and against the fourth party defendant, Hartford Accident & Indemnity Company, a corporation, for all sums that may be adjudged against the third party defendant and fourth

party plaintiff, Harris & Ogus, Inc., in favor of the third party plaintiff, Lesmark, Inc., plus costs and expenses incurred in the defense of this action, including reasonable attorneys' fees.

GALIER & STEWART

By

Frank J. Martell  
Attorneys for Third Party  
Defendant and Fourth Party  
Plaintiff  
1215 - 19th Street, N.W.

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[Filed Feb. 17, 1960]

**FOURTH PARTY COMPLAINT OF HARRIS & OGUS, INC.  
v. HARTFORD ACCIDENT & INDEMNITY COMPANY  
(No. 2364-59)**

1. Plaintiff herein, Isabel C. Fenton, has filed against defendants Walter S. Charron, Marie L. Charron, Edmund W. Dreyfuss, Nicholas C. Mandrages, Elmer Stokes, and Lesmark, Inc., a corporation, a complaint for damages, copy of which is attached hereto and marked as Exhibit "B".

2. Said complaint, in substance, alleges that these defendants, including defendant Lesmark, Inc., as a contractor, wantonly and negligently caused certain excavations to be made on a lot adjacent to premises owned by the plaintiff and that as a result plaintiff's building and property were damaged.

3. Defendant, Lesmark, Inc., a corporation, has filed a third party complaint against third party defendant, Harris & Ogus, Inc., a corporation, alleging that on or about February 11, 1959, said third party defendant as agent of the Hartford Accident & Indemnity Company, a cor-

poration, failed to secure insurance for said defendant and third party plaintiff Lesmark, Inc., which would protect said defendant and third party plaintiff Lesmark, Inc., against payment of any sums which said defendant and third party plaintiff may become legally obligated to pay as damages as a result of bodily injury or injury to, or destruction of property caused by accident. That the said third party complaint further alleges that on or about February 11, 1959, said third party defendant, Harris & Ogus, Inc., as agent for the aforesaid Hartford Accident & Indemnity Company, a corporation, had placed with the aforesaid Hartford Accident & Indemnity Company, a corporation, an order for said policy of insurance as referred to above, and had so advised said defendant and third party plaintiff, Lesmark, Inc., that such insurance was then and there in full force and effect; and that subsequent to July 27, 1959, the aforesaid fourth party defendant, Hartford Accident & Indemnity Company, a corporation, had denied to defendant and third party plaintiff, Lesmark, Inc., the protection of said policy of insurance, alleging that no such insurance was ever in force and effect. A copy of said third party complaint is attached hereto and marked as Exhibit "C".

4. That if the allegations of the original complaint and third party complaint are established, and that the said fourth party defendant, Hartford Accident & Indemnity Co., a corporation, had in fact issued no policy of insurance to defendant and third party plaintiff, Lesmark, Inc., a corporation, then said fourth party defendant, Hartford Accident & Indemnity Company, a corporation, breached its contract with third party defendant and fourth party plaintiff, Harris & Ogus, Inc., or the failure to issue said policy of insurance was the result of the carelessness and negligence of the fourth party defendant, Hartford Accident & Indemnity Company, a corporation, which breach of contract and carelessness and negligence has caused the aforesaid third party defendant and fourth party plaintiff, Harris & Ogus, Inc., to be named as a third party defendant in this action.



5. That said third party defendant and fourth party plaintiff, Harris & Ogus, Inc., may incur substantial expense to defend this pending litigation and in the event a judgment is secured against said third party defendant and fourth party plaintiff, Harris & Ogus, Inc., in said litigation, third party defendant and fourth party plaintiff, Harris & Ogus, Inc., will be damaged in whatever amount is secured as a judgment against it, plus costs of defense and attorneys' fees.

WHEREFORE, third party defendant and fourth party plaintiff, Harris & Ogus, Inc., demands judgment of and against the fourth party defendant, Hartford Accident & Indemnity Company, a corporation, for all sums that may be adjudged against the third party defendant and fourth party plaintiff, Harris & Ogus, Inc., in favor of the third party plaintiff, Lesmark, Inc., plus costs and expenses incurred in the defense of this action, including reasonable attorneys' fees.

GALIHER & STEWART

By

\_\_\_\_\_  
Frank J. Martell  
Attorneys for Third  
Party Defendant

[Filed April 8, 1960]

**ANSWER OF FOURTH PARTY DEFENDANT  
HARTFORD ACCIDENT & INDEMNITY COM-  
PANY TO FOURTH PARTY COMPLAINT**

(No. 2364-59)

First Defense

The fourth party complaint fails to state a cause of action entitling the fourth party plaintiff to relief.

Second Defense

The claim raised by the fourth party complaint is premature and does not, in any event, arise out of the transactions set forth in the complaint. The third party complaint is likewise defective for the same reasons.

Third Defense

1. This fourth party defendant admits issuing a policy of insurance to the defendant, Lesmark, Inc., through the defendant, Harris & Ogus, Inc., as agent, for insuring the defendant, Lesmark, Inc., for liability arising from bodily injury only.

2. This fourth party defendant denies that it is obligated to assume any property damage liability to the defendant, Lesmark, Inc., or that the operations in which the defendant, Lesmark, Inc., was engaged which gave rise to the plaintiff's claim were insured, in any event, by this fourth party defendant.

3. This fourth party defendant denies each and every other allegation of the fourth party complaint.

HOGAN & HARTSON

/s/ Paul R. Connolly

Attorneys for Fourth Party  
Defendant

[Certificate of Service , 7 Apr. 1960]

[Filed April 8, 1960]

**ANSWER OF FOURTH PARTY DEFENDANT  
HARTFORD ACCIDENT & INDEMNITY COMPANY  
TO FOURTH PARTY COMPLAINT**

(No. 3506-59)

First Defense

The fourth party complaint fails to state a cause of action entitling the fourth party plaintiff to relief.

Second Defense

The claim raised by the fourth party complaint is premature and does not, in any event, arise out of the transactions set forth in the complaint. The third party complaint is likewise defective for the same reasons.

Third Defense

1. This fourth party defendant admits issuing a policy of insurance to the defendant, Lesmark, Inc., through the defendant, Harris & Ogus, Inc., as agent, for insuring the defendant, Lesmark, Inc., for liability arising from bodily injury only.

2. This fourth party defendant denies that it is obligated to assume any property damage liability to the defendant, Lesmark, Inc., or that the operations in which the defendant, Lesmark, Inc., was engaged which gave rise to the plaintiff's claim were insured, in any event, by this fourth party defendant.

3. This fourth party defendant denies each and every other allegation of the fourth party complaint.

HOGAN & HARTSON

/s/ Paul R. Connolly  
Attorneys for Fourth  
Party Defendant  
800 Colorado Building  
Washington 5, D. C.

[Certificate of Service, 7 Apr. 1959]

[Filed May 13, 1960]

ORDER [Severing]

[3506-59]

This cause came before the Court this term on the motions of the fourth party defendant to sever the third and fourth party proceedings in the case from the main proceedings between plaintiff and defendants, and to stay the third and fourth party proceedings until the final disposition of the main proceedings between the plaintiff and the defendants; and on the motion of the fourth party defendant for an extension of time within which to respond to certain requests for admissions filed by the third party defendant-fourth party plaintiff over date of service of April 18, 1960 and directed to the fourth party defendant until after the Court rules on the motions to sever and stay.

Written opposition having been filed by the third party plaintiff and by the third party defendant-fourth party plaintiff and oral argument having been had in open court and the Court being fully advised in the premises, it is by the Court this \_\_\_\_ day of May, 1960,

ORDERED, that the motion to extend time within which to respond to the above-mentioned requests for admissions be and the same is hereby granted, and the fourth party defendant is given ten (10) days from the date of this order within which to respond. It is by the Court, further

ORDERED, that the motion to sever the third and fourth party proceedings from the main proceedings between plaintiff and defendants be and the same is hereby granted. It is by the Court, further

ORDERED, that the motion to stay the third and fourth party proceedings until after the final disposition of the main proceedings between plaintiff and defendants be and the same is hereby granted and all further proceedings are stayed, except that the fourth party defendant shall respond to the requests for admissions hereinbefore identified within ten (10) days.

/s/ Edward A. Tamm  
Judge

[Filed Nov. 21, 1962]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ISABEL C. FENTON,  
Plaintiff

v.

C. A. No. 2364-59

WALTER S. CHARRON, et al,  
Defendants

and

ROBERT ASH,  
Plaintiff

v.

C. A. No. 3506-59

WALTER S. CHARRON, et al,  
Defendants

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The above-captioned causes of action were consolidated for trial pursuant to order of this Court. The parties hereto waived trial by jury and said causes were thereafter tried by the Court without a jury. After a full hearing in open Court and consideration of the pleadings, the evidence adduced, the stipulations of counsel, and the oral arguments of counsel, the Court makes the following findings of fact and conclusions of law.

Findings of Fact

1. The plaintiff, Isabel C. Pryce, owned Lot 807 in Square 86, improved by premises 1917 Eye Street, N.W., in the District of Columbia. The said premises had been rented to tenants for use as office space since 1946. In July, 1959, the building was in a good, tenantable condition and the entire premises were leased on a month to month tenancy to M. Belmont Ver Standig, Inc., at a rental of \$805.00 per month, with

the owner providing janitor and char services, utilities, heat and elevator service.

2. The plaintiff, Robert Ash, owned Lot 30 in Square 86, improved by premises 1921 Eye Street, N.W., in the District of Columbia. Said premises were used as office space and in July, 1959, were occupied by the owner and his law firm.

3. The defendants, Walter S. Charron and Marie L. Charron owned Lot 29 in Square 86, known as 1919 Eye Street, N.W., in the District of Columbia.

4. The defendant, Edmund W. Dreyfuss, registered Architect, contracted with the defendants, Walter S. and Marie L. Charron to prepare plans and specifications for the erection of a new building on said Lot 29 in Square 86, and to perform supervisory services in connection therewith.

5. The defendants, Walter S. Charron and Marie L. Charron, applied to the District of Columbia Government for a building permit to erect a new building on said Lot 29 in accordance with the plans and specifications of the Architect. The said plans were approved by the District of Columbia and permit number B50246 was issued to said owners on July 17, 1959, for the erection of said building.

6. The said owners entered into a contract with the defendant, Lesmark, Inc., a Maryland corporation, on July 17, 1959, for the construction of said building on Lot 29, the same to be erected in accordance with the approved plans and specifications.

7. The east wall of the property located at 1917 Eye Street and the west wall of the property located at 1921 Eye Street were party walls which were to enclose the two sides of the new building to be constructed on Lot 29.

8. On July 21 and 22, 1959, the defendant, Lesmark, Inc. performed the general excavation incident to the erection of the new building in accordance with the plans and specifications. On July 23, 1959, Michael M. Abrams, President of Lesmark, Inc. inspected the excavation

and determined that it was satisfactory and that the said party walls were in good condition.

9. On July 27, 1959, the site at 1919 Eye Street, N. W., was inspected by James W. Harris, Inspector, Department of Licenses and Inspections, District of Columbia Government. He determined that the general excavation was properly done. At that time there were no cracks or other evidence of damage to the buildings of the two plaintiffs.

10. The plans did not provide for the making of any excavations beyond the face of the two party walls. Excavations for footings were to be made on said Lot 29 at certain points up to the faces of the two party walls, but not beyond.

11. On July 28, 1959, at about 7:30 A.M., the defendant, Lesmark, Inc., caused numerous pits or excavations to be dug by hand under both of the said party walls. These pits or excavations were made at points other than where the plans called for footings to be placed along the faces of the party walls and were directly under the two party walls. No support of any kind was provided by Lesmark, Inc., for the said party walls in connection with these excavations.

12. The said pits or excavations under the party walls were in violation of the plans and specifications and of the applicable Building Regulations of the District of Columbia Government. Lesmark, Inc. was negligent in making these excavations and this negligence was the proximate cause of the damage resulting to the buildings of the two plaintiffs.

13. Immediately following the making of said pits or excavations on July 28, 1959, cracks began to appear in both party walls and in the front wall of the building at 1917 Eye Street, N.W. Cracks also appeared in various rooms in both buildings. The District of Columbia Government ordered the contractor, architect and the owners of Lot 29 to take immediate steps for placing concrete in the holes left as a result of said excavations. Also, they were ordered to place shoring or



bracing between the two party walls as a means of providing support therefor.

14. As a result of the damage to the premises at 1917 Eye Street, N.W., on July 28, 1959, the District of Columbia Government ordered the tenant to immediately vacate the building.

15. As a result of the movement of the party walls and the front wall of the 1917 Eye Street building, and of the cracks in the walls, plaster was loosened or fell from the walls and ceilings of many rooms in both buildings. Many doors and windows in both buildings were caused to be out of plumb and would not open and close and the floors in several of the rooms at 1917 Eye Street, N.W., were racked and slanted out of level. The elevator in the building at 1917 Eye Street, N.W., was ordered closed by the District of Columbia Government and the shaft, electrical equipment and cable with respect thereto, were damaged and required repair. In the building at 1921 Eye Street, N.W., in addition to the cracks occurring, the ceramic tile on the floor and walls of two of the wash rooms buckled and broke away. The movement of the party wall at 1921 Eye Street, N.W. caused a leak in the roof and in a water pipe.

16. The placing of the shoring or bracing between the party walls caused additional cracks and further falling of plaster to occur in both buildings. The shoring was removed in stages as construction of the new building progressed, and further cracking of the walls in both buildings occurred during the course of the removal of said bracing.

17. On July 29, 1959, the District of Columbia Government ordered the contractor and owners of Lot 29 to temporarily shore and make safe the buildings at 1917 and 1921 Eye Street, N.W., and to submit plans and procedures, and obtain approval of the same, for permanently restoring the said buildings.

18. The contractor and owners of 1919 Eye Street, N.W., failed to comply with the provisions of the directive of July 29, 1959 of the District of Columbia Government and the plaintiff, Pryce, obtained a tem-

porary restraining Order, issued by this Court on September 9, 1959, enjoining the contractor, architect and owners from proceeding with construction on 1919 Eye Street, N.W., until the building at 1917 Eye Street, N.W., was made structurally safe. Said Order was continued in effect by the Court, with the consent of the parties, for an extended period of time while Lesmark, Inc., completed the structural repairs to the building at 1917 Eye Street, N.W. Thereafter, Lesmark, Inc., made some interior repairs in the front portion of the building at 1917 Eye Street, N.W. In making these repairs, Lesmark, Inc., caused and permitted debris to accumulate in many of the rooms in the rear portion of this building, which with the other damage resulting, made necessary the redecoration of these rooms. The making of the structural repairs to the front of the building at 1917 Eye Street, N.W., made it necessary to repaint the front of said building. Lesmark, Inc., and the owners of 1919 Eye Street, N.W., did not make all of the repairs required for the building at 1917 Eye Street, N.W., and they made no repairs to the building at 1921 Eye Street, N.W.

19. On July 31, 1959, M. Belmont Ver Standig, Inc., the tenant in the building at 1917 Eye Street, N.W., notified the owner of said building in writing that it would vacate the premises on or before August 31, 1959. The tenant also advised that it would not pay rent for the month of August, 1959, because the said premises were made untenable and as the tenant was evicted therefrom by reason of the untenable conditions.

20. The owner of the building at 1917 Eye Street, N.W., listed her property for rent with a local real estate agent in December, 1959. Thereafter, she listed the property for sale or rent with several real estate agents in the District of Columbia. The owner was unsuccessful in obtaining a tenant or tenants for her building. She sold the property for \$67,500.00, conveying title thereto, pursuant to said sale, on December 15, 1960. The plaintiff, Pryce, made diligent efforts to obtain a tenant or tenants or a purchaser for said premises. It was stipulated

by counsel that the repairs to the building at 1917 Eye Street, N.W., were completed by March 1, 1960.

21. Permanent damages were sustained to the building at 1917 Eye Street, N.W. The items constituting such damages include the racking of the floors, which could not be repaired, the exterior cracks to the front of the building, the fact that the building was caused to be vacant, and the bad reputation the building acquired as a result of the accident. The result of the permanent damages caused to the building reduced the market value of the property by the sum of \$7,500.00, which will be awarded to the plaintiff, Pryce, as an item of damage.

22. The plaintiff, Pryce, sustained a loss of rent from her property for the period from August 1, 1959, through December 15, 1960, computed as follows:

Gross rental at \$805.00 per month	\$13,865.00
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Less: Adjustment for services normally supplied by owner, based on the average monthly cost thereof for the years 1957 and 1958 in the sum of about \$345.00 per month	5,865.00
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\$ 8,000.00
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Add: The cost of heat, light and maintenance during the period when repairs were being made and during the showing of the property for rent or sale	1,800.00
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\$ 9,800.00
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The sum of \$9,800.00 will be awarded to the plaintiff, Pryce, for loss of rent.

23. The plaintiff, Pryce, is awarded the sum of \$4,100.00, for repairs to her property, made necessary as a result of the damages sustained to her property, as follows:

Whiting Elevator Co., Inc.	\$ 390.00
Adams Renovating Company, Inc.	2,469.00
Gott's Linoleum, Inc.	348.75
Wizard Locksmith Company	29.78
Bernard F. Locraft	292.75
Debris and trash removal	149.00
Electrical Associates	420.89
Total rounded to -	<u>\$4,100.00</u>

24. The plaintiff, Ash is awarded the sum of \$3,472.00 for repairs to his property at 1921 Eye Street, N.W., sustained as a result of this accident, as follows:

A. W. Lee, Inc.	\$1,170.00
A. W. Lee, Inc.	175.13
J. W. Conway, Inc.	67.21
Hamilton Decorating Co.	1,515.75
Frances Luna Ash, Inc.	47.07
Bernard F. Locraft	270.25
Smither & Company	37.00
Davis, Wick, Rosengarten Co., Inc.	58.00

The foregoing claims plus such sums on the claims of James J. Madden and Standard Floors, Inc. are allowed so as to bring the amount of this award to the sum of \$3,472.00.

25. The total amounts to be awarded to the plaintiff, and against the defendants, Walter S. Charron, Marie L. Charron and Lesmark, Inc. are as follows:

To plaintiff, Isabel C. Pryce	\$21,400.00
To plaintiff, Robert Ash	3,472.00

26. The defendants, Walter S. Charron and Marie L. Charron, are entitled to complete indemnity from the defendant, Lesmark, Inc., for liability incurred by them as a result of the judgments being entered herein in favor of the plaintiffs.

27. The sum of \$2,000.00 is awarded in favor of the defendants, Walter S. Charron and Marie L. Charron and against the defendant,

Lesmark, Inc., for counsel fees and costs, as provided in the contract entered into between said parties and the specifications for construction of the new building at 1919 Eye Street, N. W.

28. The defendants, Walter S. Charron and Marie L. Charron are not entitled to indemnity on their cross claim against the defendant, Edmund W. Dreyfuss, in these cases.

29. The defendant, Lesmark, Inc., is not entitled to recover on its oral cross claim against the defendant, Edmund W. Dreyfuss.

Conclusions of Law

1. That the plaintiff, Isabel C. Pryce shall have judgment for the sum of \$21,400.00, and the plaintiff, Robert Ash shall have judgment for \$3,472.00, both of said judgments to be entered against the defendants, Walter S. Charron, Marie L. Charron and Lesmark, Inc. The liability of the defendants, Walter S. Charron and Marie L. Charron is established by law by reason of their being the owners of 1919 Eye Street, N.W.

2. That the defendants, Walter S. Charron and Marie L. Charron shall be entitled to a judgment against Lesmark, Inc., in the sum of \$2,000.00, for counsel fees and costs, and shall also be entitled to a judgment against Lesmark, Inc., for the amount of liability incurred against the said Walter S. Charron and Marie L. Charron by reason of the judgments to be entered herein against them and in favor of the two plaintiffs.

3. The defendant, Edmund W. Dreyfuss, shall be entitled to a judgment on the cross claim against him by the defendants, Walter S. Charron and Marie L. Charron.

4. The defendant, Edmund W. Dreyfuss, shall be entitled to a judgment on the cross claim against him by the defendant, Lesmark, Inc.

Edward A. Tamm, Judge

[Filed Nov. 21, 1962]

**JUDGMENTS**

(Nos. 2364-59 and 3506-59)

The above-entitled causes of action having come on for trial before the Court without a jury, and after a full hearing in open Court and consideration of the pleadings, the evidence adduced, the stipulations of counsel, and the oral arguments of counsel, and the Court having filed its findings of fact and conclusions of law herein, it is by the Court on this 21st day of November, 1962.

ORDERED, That the plaintiff, Isabel C. Pryce, have judgment against the defendants, Walter S. Charron, Marie L. Charron and Lesmark, Inc., in the sum of Twenty One Thousand Four Hundred Dollars (\$21,400.00), together with interest thereon at the legal rate from the date hereof and the costs of this action, and it is,

FURTHER ORDERED, That the plaintiff, Robert Ash, have judgment against the defendants, Walter S. Charron, Marie L. Charron and Lesmark, Inc., in the sum of Three Thousand Four Hundred and Seventy Two Dollars (\$3,472.00), together with interest thereon at the legal rate from the date hereof and the costs of this action, and it is,

FURTHER ORDERED, That the defendants, Walter S. Charron and Marie L. Charron, have judgment against the defendant, Lesmark, Inc., in the sum of Two Thousand Dollars (\$2,000.00), together with interest at the legal rate from the date hereof, and it is,

FURTHER ORDERED, That the defendants, Walter S. Charron and Marie L. Charron have judgment against Lesmark, Inc., for the full amount of liability incurred against the said Walter S. Charron and Marie L. Charron by reason of the aforesaid judgments entered against them herein and in favor of the plaintiffs, Isabel C. Pryce and Robert Ash, and it is,

FURTHER ORDERED, That the cross claims of the defendants,

Walter S. Charron, Marie L. Charron and Lesmark, Inc., against the defendant, Edmund W. Dreyfuss, be and the same are hereby dismissed, with costs to the defendant, Edmund W. Dreyfuss.

/s/ Edward A. Tamm  
Judge

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[Filed Dec. 3, 1962]

**ORDER GRANTING LEAVE TO FILE CROSS-CLAIM**  
(Nos. 2364-59 and 3506-59)

Upon consideration of the motion for leave to assert a cross-claim against Hartford Accident and Indemnity Company, filed herein on behalf of the defendant Lesmark, Inc., in the above-entitled causes, and it appearing that no objection has been filed in opposition thereto, it is by the Court this 3rd day of December 1962

ORDERED, that Lesmark, Inc., a defendant in each of the two above entitled causes be and the same hereby is granted leave to file its cross claim herein against the fourth-party defendant Hartford Accident and Indemnity Company.

/s/ Edward R. Walsh  
Judge

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[Filed Dec. 11, 1962]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ISABEL C. PRYCE  
Plaintiff

vs.

WALTER S. CHARRON, et al.,  
Defendants

Civil Action No. 2364-59

Civil Action No. 3506-59

ROBERT ASH  
Plaintiff

vs.

WALTER S. CHARRON, et al.,  
Defendants

ANSWER OF FOURTH PARTY DEFENDANT HART-  
FORD ACCIDENT & INDEMNITY COMPANY TO  
CROSS-CLAIM OF LESMARK, INC.

First Defense

The claim of defendant Lesmark, Inc. against the fourth party de-  
fendant Hartford Accident and Indemnity Co. is barred by limitations.

Second Defense

The claim of defendant Lesmark, Inc. against the fourth party de-  
fendant Hartford Accident and Indemnity Co. is barred by laches.

Third Defense

The cross-claim of the defendant Lesmark, Inc. fails to state a  
cause of action against the fourth party defendant Hartford Accident  
and Indemnity Co.

Fourth Defense

1. The fourth party defendant Hartford Accident and Indemnity Co.  
(hereinafter called Hartford) denies that it was contractually obligated

to defendant Lesmark, Inc. to pay for any damages recoverable against the defendant Lesmark, Inc. by either Walter S. or Marie L. Charron, or Isabel C. Pryce, or Robert Ash.

a. It further denies that it had any insuring obligation toward the defendant Lesmark, Inc. for the operations being performed in the 1900 block of Eye Street, N.W., Washington, D.C., during July 1959, upon which the plaintiffs' claims against the defendant Lesmark, Inc. were predicated.

3. The fourth party defendant Hartford further denies that the third party defendant Harris & Ogus, Inc. had any authority to or did in fact bind the fourth party defendant Hartford for insurance coverage of the character and type which would require the fourth party defendant Hartford to indemnify the defendant Lesmark, Inc.

4. The fourth party defendant Hartford denies all other allegations of the cross-claim of the defendant Lesmark, Inc.

HOGAN & HARTSON

By Paul R. Connolly

Attorneys for Fourth Party Defendant  
Hartford Accident and Indemnity Co.

[Certificate of service,  
Dec. 11, 1962]

[Filed Dec. 11, 1962]

**INTERROGATORIES OF FOURTH PARTY DEFENDANT  
HARTFORD ACCIDENT & INDEMNITY COMPANY TO  
THIRD PARTY DEFENDANT HARRIS & OGUS, INC.**

(Nos. 2364-59 and 3506-59)

To: Harris & Ogus, Inc.  
c/o Galiher & Stewart  
1215 - 19th Street, N.W.  
Washington, D. C.

The following interrogatories are served upon you, pursuant to Rule 33, F.R.C.P. They are to be answered fully in writing by you, under oath, within fifteen (15) days of their receipt unless the time is otherwise extended by agreement of counsel or order of the Court.

The information requested in these interrogatories is not only that which you possess but also that which is known to your attorneys or any other representative of yours.

1. The second defense of the answer of Harris & Ogus, Inc. to the third party complaint states that Harris & Ogus, Inc. "admits being requested by the third party plaintiff to secure property damage coverage on the then existing Hartford Accident & Indemnity Company comprehensive general liability policy No. 42 MCS 601753; admits advising third party plaintiff, Lesmark, Inc., that he was then bound upon this additional property damage coverage in accordance with a general agent's binding authority." Accordingly, state the following:

- a. Give the name, address and position of responsibility, if known, of the person who, on behalf of Lesmark, Inc. requested Harris & Ogus, Inc. to secure property damage coverage as alleged in the foregoing portion of your answer.
- b. State the date when such request was made.
- c. State the place when such request was made.

d. State whether the request was in writing or oral.

e. If in writing, state whether Harris & Ogus, Inc. will provide Hartford Accident & Indemnity Co. (hereinafter called Hartford) with a copy of the writing. If oral, state whether any contemporaneous memorandum, notation or record was made of the fact of the request, and if so whether Hartford will be provided with a copy thereof.

f. State the name, address and position of the person at Harris & Ogus, Inc. who received the request.

g. State the name, address and position of any person in Harris & Ogus, Inc. who made any contemporaneous note or memorandum pertaining to the request.

h. State in detail and by description what records are in the possession of Harris & Ogus, Inc. to substantiate the fact that any such request was made.

i. State the name and address and position of the person who, as you allege, placed this order with Hartford.

j. State the name, address and position of all persons in the Harris & Ogus, Inc. organization who have any knowledge pertaining to the placement of this alleged order, and state with respect to each whether the knowledge is personal or upon information and belief.

k. State whether the alleged order was placed orally or in writing.

l. If the order was placed in writing and Harris & Ogus, Inc. has a copy thereof, state whether Harris & Ogus, Inc. will provide Hartford with a copy thereof.

m. If in writing, state the addresses to whom the written order was sent.

n. If the alleged order was orally placed, state the name and address of the person in the Hartford organization to whom the person placing the order spoke. Further state whether the communication was by telephone or in person.

o. State the date on which the order, whether written or oral, was placed.

p. If oral, state whether any contemporaneous memorandum, notation or record was made of the fact and further state whether Harris & Ogus, Inc. will provide Hartford with a copy thereof.

q. State the name, address and position of the person in Harris & Ogus, Inc. who advised "third party plaintiff Lesmark, Inc. that he was then bound upon this additional property damage coverage in accordance with a general agent's binding authority."

r. State who the word "he" refers to in the foregoing quoted material.

s. State the date on which such advice was given.

t. State whether the advice given Lesmark, Inc. was done orally or in writing.

u. If in writing, state whether Harris & Ogus, Inc. has a copy of the communication and whether it will provide Hartford with a copy thereof.

v. If oral, state whether any contemporaneous memorandum, notation or record was made of the fact; the name and address of the person making it, and whether Harris & Ogus, Inc. will provide Hartford with a copy thereof.

w. State what you understand to be "a general agent's binding authority" and give the reference to the contractual documents between Hartford and Harris & Ogus, Inc. which you contend supports this interpretation.

2. State the names and addresses of all insurance companies for whom you acted as either a special or general agent during the year 1959.

3. State precisely and in detail all insurance coverage which Harris & Ogus, Inc. wrote for Lesmark, Inc. in 1959, giving the name and address of the company in which the insurance was written; the amount of premium collected, and a description of the insurance provided.

4. State the length of time for which Harris & Ogus, Inc. had been writing insurance for Lesmark, Inc. or Michael Abrams.

5. State the name and address of the company with whom you placed a comprehensive liability policy for Lesmark, Inc. or Michael Abrams, for each and every year you had written such coverage for either of them.

a. State with respect to each policy year whether property damage liability was included in such a comprehensive general liability policy, and further state whether each of such policies included coverage for collapse or damage to buildings due to excavation.

b. With respect to each such policy, state the total policy premium and show the particular premium for each type of coverage.

6. State whether or not Harris & Ogus, Inc. in 1959 billed Lesmark, Inc. for property damage coverage under the comprehensive general liability policy referred to.

a. State date on which bill was rendered.

b. State the name and address of the person rendering it.

c. State whether Lesmark, Inc. paid the bill.

d. State the name and address of the person paying the bill.

e. State the date on which Harris & Ogus, Inc. collected the premium.

f. State whether Harris & Ogus, Inc. will provide Hartford with a copy of any billing statement referred to in the previous question.

g. State whether all or any part of the premium for such property damage covered was remitted to Hartford.

h. State the name and address of the person making the remittance, the date thereof, and describe what records are in the possession of Harris & Ogus, Inc. which would demonstrate the sending of such a remittance.

7. Describe in detail what documentation was sent to Lesmark, Inc. indicating the nature and extent of the coverage which Lesmark, Inc. had under Hartford's comprehensive general liability policy heretofore referred to.

8. Describe by date, author and brief description every piece of



documentation in the possession of Harris & Ogus, Inc. pertaining to placing with Hartford insurance covering any and all operations and activities of either Lesmark, Inc. or Michael Abrams.

9. State whether or not Harris & Ogus, Inc. in the year 1959 issued any certificates of insurance to any third person evidencing property damage coverage in Lesmark, Inc. If so, name each such third person, give the date such a certificate was issued, the name and address of the person issuing it, and the name and address of the third person to whom it was issued.

a. State whether in 1959 Harris & Ogus, Inc. refused to issue any such certificates of insurance. If so, state the date when the refusal was made and the name and address of the person making the refusal and the name and address of the third party who was refused.

b. Describe in detail what documentation is in possession of Harris & Ogus, Inc. pertaining to each transaction having to do with the issuance of a certificate of insurance with respect to each occasion on which a request was made.

HOGAN & HARTSON

/s/ Paul R. Connolly

Attorneys for Fourth Party Defendant

[Certificate of Service, 11 Dec. 1962]

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[Filed Dec. 11, 1962]

**INTERROGATORIES OF FOURTH PARTY DEFENDANT  
HARTFORD ACCIDENT & INDEMNITY COMPANY TO  
DEFENDANT LESMARK, INC.**

(Nos. 2364-59 and 3506-59)

To: Lesmark, Inc.  
c/o Samuel Barker and Maurice Friedman, Esqs.,  
1001 Connecticut Avenue, N.W.  
Washington 6, D. C.

The following interrogatories are served upon you, pursuant to Rule 33, F.R.C.P. They are to be answered fully in writing by you, under oath, within fifteen (15) days of their receipt unless the time is otherwise extended by agreement of counsel or order of the Court.

The information requested in these interrogatories is not only that which you possess but also that which is known to your attorneys or any other representative of yours.

1. In paragraph 3 of your cross-claim against Hartford Accident and Indemnity Company (hereinafter called Hartford) you allege that Harris & Ogus, Inc. "agreed to secure insurance for . . . Lesmark, Inc. which would pay on behalf of the insured all sums which [Lesmark] shall become legally obligated to pay as damages for all bodily injury or injury to or destruction of property, including the loss of use thereof, caused by [Lesmark]; said insurance was to provide coverage to the extent of \$100,000. for property damage . . .". Accordingly, answer the following:

- a. State the date on which Harris & Ogus, Inc. "agreed" to secure such insurance.
- b. State the name, address and position of responsibility of the person who on behalf of Lesmark, Inc. requested this insurance.
- c. State the form of request, whether oral or in writing.

d. If oral, state whether any contemporaneous memorandum, notation or record was made of that fact of the request.

e. State the name, address and position of responsibility of the person who made any such contemporaneous memorandum, notation or record.

f. State whether Lesmark, Inc. will provide Hartford with a copy of any writing pertaining to said request.

g. State the manner in which Harris & Ogus, Inc. "agreed" to secure insurance for Lesmark, Inc. of the type and character indicated in the above quoted language.

h. State whether the response of Harris & Ogus, Inc. was oral or in writing.

i. If in writing, state the name and address of the person in Harris & Ogus, Inc. who authored the writing.

j. If oral, state the name and address of the person in Harris & Ogus, Inc. who made the response. In this connection, further state whether as a result of the oral response any person, on behalf of Lesmark, Inc., made any contemporaneous memorandum, notation or record.

k. State the date on which Harris & Ogus, Inc. "agreed" to provide insurance of the type heretofore quoted in your cross-claim.

l. Describe in detail what documentation is in your possession evidencing the fact that Harris & Ogus, Inc. "agreed" to secure such insurance.

m. Did Harris & Ogus, Inc. submit a bill for premiums for the insurance which you allege it "agreed" to provide?

n. State the date of that bill.

o. State whether or not Lesmark, Inc. paid that bill and the date of payment. Further indicate whether the payment was by cash or check.

p. State whether there was delivered to Lesmark, Inc. the policy of insurance or any other documents evidencing insurance. If so, de-

scribe with particularity that which was received and the date on which it was received.

q. State who has present custody of the documents just referred to.

2. State the kind and character of insurance carried by Lesmark, Inc. for each of the five years preceding 1959, and state the name of the agent with whom Lesmark, Inc. dealt in securing such insurance, and the name of each company issuing an insurance policy.

3. State whether during the year 1959 Lesmark, Inc. requested either Harris & Ogus, Inc. or Hartford to provide a certificate evidencing insurance coverage to any third party.

a. Describe each such request by giving the date it was made, the nature of the certificate requested, the third party to whom the certificate was to be sent, and state with respect to each such request whether or not the certificate was issued or refused.

4. State whether or not during the years 1955, 1956, 1957, 1958 and 1959 you requested property damage coverage or coverage against building collapse or damage due to excavation from any insurance agency or company.

a. Give the specific time such request was made and state whether or not it was granted or refused, and whether or not an additional premium was charged and paid for.

5. State whether Lesmark, Inc. requested Harris & Ogus, Inc. to secure property damage coverage after having been issued the then existing Hartford comprehensive general liability policy No. 42 MCS 60-1753.

a. If so, state the date or dates on which such requests were made.

b. State the response to each such request made by Harris & Ogus, Inc., and identify the person making the response.

6. Did Harris & Ogus, Inc. ever notify Lesmark, Inc. that Lesmark, Inc. did not have property damage coverage to cover the claims of Isabel C. Fenton and Robert Ash, or to cover claims of that type or

character?

a. If so, identify the person in the Harris & Ogus, Inc. organization who made such statements and the date or dates on which they were made. If any such statement was made, state what efforts were made by Lesmark, Inc. to secure such coverage, giving the dates each such effort was made.

HOGAN & HARTSON

/s/ Paul R. Connolly

Attorneys for Fourth Party Defendant Hartford  
Accident and Indemnity Co.

[Certificate of Service, 11 Dec. 1962]

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[Filed Mar. 11, 1963]

**ANSWERS TO INTERROGATORIES OF FOURTH  
PARTY DEFENDANT HARTFORD ACCIDENT &  
INDEMNITY COMPANY TO DEFENDANT LES-  
MARK, INC.**

(Nos. 2364-59 and 3506-59)

SS:

MICHAEL M. ABRAMS, President of Lesmark, Inc., first being duly sworn according to law, on oath makes the following answers to the interrogatories heretofore propounded to it in this cause:

1. a. February 11, 1959, or several days prior thereto.
- b. Michael M. Abrams, President of Lesmark, Inc.
- c. Oral.
- d. Was informed by Harris & Ogus, Inc., that it had changed its records to reflect the new coverage.

e. Harold Feinman, office manager, Harry Harris and Walter Ogus, partners in Harris & Ogus, Inc., all advised affiant that change was made.

f. See c.

g. They said "you are covered".

h. Both.

i. Harold Feinman.

j. Harold Feinman, none.

k. February 11, 1959.

l. Certificate of Insurance issued to Pepco.

m. Yes.

n. All bills from 2/59 to 9/30/59 reflected similar coverage and premiums paid. The 9/30/59 bill did not.

o. All bills paid by check and Harris & Ogus, Inc., has records -- payment dates 4/29/59, 6/11/59, 2/10/60.

p. No new document received because Harris & Ogus, Inc., advised master policy amended as indicated above. Master policy received 8/-26/58.

q. Samuel Barker.

2. All handled by Harris & Ogus, Inc., and they have records.

3. Yes.

a. 2/11/59 Pepco issued certificate of insurance.

b. Approximately 6/59 Bladen Realty Corp. issued certificate of insurance.

c. Approximately 5/59 Rockville Volunteer Fire Department issued certificate of insurance.

d. 7/20/59 Walter S. Charron -- Harris & Ogus, Inc., advised affiant it issued certificate.

4. 1959 only.

a. See 3 above, premium charged and paid for all jobs.

5. Yes.

a. See 1 above.



b. Same.

6. No.

/s/ Michael M. Abrams  
President

[Jurat]

[Certificate of Service, 8 Mar. 1963]

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[Filed Nov. 14, 1964]

**ANSWERS OF DEFENDANT AND THIRD PARTY  
PLAINTIFF, HARRIS & OGUS, INC., TO INTER-  
ROGATORIES**

No. 2364-59

1. Rather than a comprehensive general liability policy being involved in this case, it was a Manufacturers and Contractors liability policy.

a. Either Michael M. Abrams, President of Lesmark, or Mrs. Rubin, an employee of Lesmark.

b. The exact date of request from Lesmark to Harris & Ogus cannot be determined, but according to the file, the order was placed on February 11, 1959.

c. Presumably from Abrams' office.

d. Oral.

e. There is a memorandum in the file to Hartford Accident & Indemnity.

f. It is believed to be Mrs. A. Patricia Taylor, 431 Fairfax Road, Alexandria, Virginia.

g. Mrs. A. Patricia Taylor.

h. Assuming substantiation is required, there was a memorandum written February 11th, as described.

i. Mrs. A. Patricia Taylor.

j. Mrs. A. Patricia Taylor, personal, and upon information and belief; Mr. Harold Fineman, 9729 Hedin Drive, Silver Spring, Maryland, upon information and belief.

k. In writing.

l. Yes.

m. 1000 Vermont Avenue, N.W., Washington, D. C.

n. Subsequent to the written order, there were several telephone conversations between Mrs. Taylor and representatives of the Hartford organization.

o. 2/11/59.

p. Yes.

q. Mrs. A. Patricia Taylor, or Mr. Harold Fineman.

r. Mr. Michael Abrams, or Mrs. Rubin.

s. See "t" below.

t. Orally. When the assured placed the order, he assumed that he was bound. It is the policy of Harris & Ogus to lead our assureds to believe that they are so bound.

u. No written notification.

v. See answer to "t" above.

w. Any coverage coming within the contractual agreement with the company and the Harris & Ogus Agency falls within the binding authority of the Agency, except for certain specific coverages and lines which the Company forbids the agent to bind.

2. Hartford Accident & Indemnity Company, Hartford, Connecticut; Hartford Fire, Hartford, Connecticut; St. Paul Fire & Marine, St. Paul, Minnesota; Aetna Insurance Group, Hartford, Connecticut; Fidelity-Phoenix Insurance Company, New York, New York; New York Fire Insurance Company, New York, New York; Camden Fire Insurance Company, Camden, New Jersey; Providence-Washington Insurance Co., Pro-

vidence, R. I.; National Union Insurance Company of D.C., Washington, D. C.; Merchants and Manufacturers Insurance Company, New York, New York.

3. 2/6/59, Construction Bond, PEPCO Company, Hartford A & I, \$235.90.

6/11/59, hold-up, Hartford, \$22.00.

6/26/59, Builder's Risk, Merchant and Manufacturers Company, \$255.01.

8/21/59, Workmen's Compensation, Aetna Insurance Company, \$747.75 deposit.

8/21/59, M and C liability policy, Aetna, \$296.40 deposit.

The above are in addition to the policy involved.

4. Since April 1957, when the firm of Harris & Ogus was founded. For the previous ten years, Mr. Harry L. Harris, one of the founders of Harris & Ogus had been writing insurance for Lesmark, Inc., or Michael Abrams.

5. Hartford A & I MCS policy 8/26/56 through 1957; 8/26/57 through 1958; 8/26/58 through 1959.

a. There was no property damage liability included in any of the policies as set forth above, with the exception of the addition of this coverage to the policy issued 8/26/58, when such coverage was added in mid-term, February 11, 1959. None of these listed policies included coverage for collapse or damaged buildings due to excavation.

b. Hartford A & I had the final audits on these figures.

6. We only billed PD coverage for specific jobs as billed to us by Hartford A & I after claim had happened.

a. After expiration of policy on audit.

b. Agency.

c. Yes.

d. Lesmark, Inc.

e. A check was received from Lesmark in October of 1960, for payment of premiums on this and other policies of insurance.

f. Yes.

g. Yes.

h. Agency Account Current Sheets of which the Hartford office has copies.

7. This was the standard M and C policy. There was no documentation other than the policy itself.

8. Memorandum of 2/11/59, previously referred to; notation of follow-up; certificate of insurance on two jobs dated June and July 1959, since we assumed that there was coverage.

9. Yes. Dixie Janitor Supply Warehouse, 210 Massachusetts Avenue, N.W., 6/8/59 and 7/6/59. Rockville Volunteer Fire Department, 22 South Perry Street, Rockville, Maryland, 6/18/59. Believed to be Mrs. A. Patricia Taylor.

a. No.

b. The documents as described above.

HARRIS & OGUS, INC.

By /s/ Harold Feinman  
Vice President

[Jurat]

[Certificate of Service, 13 Nov. 1964]

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[Filed May 8, 1964]

**JUDGMENT ON CROSS-CLAIM IN FAVOR OF  
DEFENDANTS WALTER S. CHARRON AND MARIE  
L. CHARRON AGAINST DEFENDANT LESMARK, INC.**

(No. 2364-59)

It appearing to the Court that by the certified copy of the opinion and judgment of the United States Court of Appeals for the District of Columbia Circuit, filed herein April 29, 1964, that the judgment of this Court entered herein November 21, 1962, by which defendants Walter S. Charron and Marie L. Charron were awarded judgment on their cross-claim against defendant Lesmark, Inc., for the full amount of liability incurred against the said Walter S. Charron and Marie L. Charron by reason of the judgment entered against them herein in favor of the plaintiff, has been duly affirmed, and it appearing to the Court that defendants Walter S. Charron and Marie L. Charron have heretofore on May 22, 1963, paid and satisfied in full the judgment in favor of the plaintiff in the principal amount of \$21,400.00, court costs of \$13.00 and interest of \$588.50, as evidenced by praecipe of the plaintiff filed herein, and that defendants Walter S. Charron and Marie L. Charron are thereby entitled to the entry of a money judgment herein for the aggregate of the aforementioned amounts against the defendant Lesmark, Inc., it is, by the Court, this 8th day of May, 1964,

ADJUDGED and ORDERED that judgment be, and it is hereby entered in favor of defendants Walter S. Charron and Marie L. Charron against defendant Lesmark, Inc., in the sum of \$22,001.50, with interest thereon from May 22, 1963, together with their taxable costs, and that they have execution therefor.

/s/ Edward A. Tamm  
Judge

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[Filed May 8, 1964]

**JUDGMENT ON CROSS-CLAIM IN FAVOR OF  
DEFENDANTS WALTER S. CHARRON AND  
MARIE L. CHARRON AGAINST DEFENDANT  
LESMARK, INC.**

(No. 3506-59)

It appearing to the Court that by the certified copy of the opinion and judgment of the United States Court of Appeals for the District of Columbia Circuit, filed herein April 29, 1964, that the judgment of this Court entered herein November 21, 1962, by which defendants Walter S. Charron and Marie L. Charron were awarded judgment on their cross-claim against defendant Lesmark, Inc., for the full amount of liability incurred against the said Walter S. Charron and Marie L. Charron by reason of the judgment entered against them herein in favor of the plaintiff, has been duly affirmed, and it further appearing to the Court that defendants Walter S. Charron and Marie L. Charron have heretofore on May 22, 1963, paid and satisfied in full the judgment in favor of the plaintiff in the principal amount of \$3,472.00, court costs of \$13.00 and interest of \$95.48 as evidenced by praecipe of the plaintiff filed herein, and that defendants Walter S. Charron and Marie L. Charron are thereby entitled to the entry of a money judgment herein for the aggregate of the aforementioned amounts against the defendant Lesmark, Inc., it is, by the Court, this 8th day of May, 1964,

ADJUDGED and ORDERED that judgment be, and it is hereby entered in favor of defendants Walter S. Charron and Marie L. Charron against defendant Lesmark, Inc., in the sum of \$3,580.48, with interest thereon from May 22, 1963, together with their taxable costs, and that they have execution therefor.

/s/ Edward A. Tamm  
Judge

[Certificate of Service, 5 May 1964]

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[Filed Oct. 19, 1964]

**PRETRIAL STATEMENT OF FOURTH-PARTY  
DEFENDANT HARTFORD ACCIDENT &  
INDEMNITY COMPANY**

No. 3506-59

The fourth-party defendant, Hartford Accident & Indemnity Company, suggests preliminarily that, since the action between the original parties to this cause, which has been severed from the claims against the third and fourth-party defendants, is now completed, the name of the present action be changed, and that, by agreement of the parties, it contain one civil action number.

The defendant, Hartford Accident & Indemnity Company, denies any liability to the third-party plaintiff, Lesmark, Inc. since it did not contract to furnish to Lesmark, Inc. either property damage insurance coverage or any insurance coverage which covered injury or destruction of property arising out of the collapse of or structural injury to any building or structure due to excavation, including borrowing, filling or back-filling in connection therewith, or to tunneling, pile driving, cofferdam work or caisson work or to moving, shoring, underpinning, raising or demolition of any building or structure or removal or re-building of any structural support thereof, nor did it provide insurance coverage for injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property, or any apparatus in connection therewith, below the surface of the ground, if such injury or destruction is caused by and occurs during the use of mechanical equipment for the purpose of excavating or drilling, or to injury to or destruction of property at any time resulting therefrom.

The defendant, Hartford Accident & Indemnity Company, denies any liability as fourth-party defendant to the fourth-party plaintiff, Harris & Ogus, Inc., upon the ground that:

1. Harris & Ogus, Inc. was not authorized to provide general prop-

erty damage insurance to Lesmark, Inc.

2. Harris & Ogus, Inc. did not request either property damage insurance for Lesmark, Inc. for its operations on Eye Street, N. W., on July 29, 1959, nor did it request insurance from Hartford for injury to or destruction of any property arising out of the collapse of or structural injury to any building or structure due to excavation, including borrowing, filling or back-filling in connection therewith, or to tunneling, pile driving, coffer-dam work or caisson work or to moving, shoring, underpinning, raising or demolition of any building or structure or removal or re-building of any structural support thereof, nor did it provide insurance coverage for injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property, or any apparatus in connection therewith, below the surface of the ground, if such injury or destruction is caused by and occurs during the use of mechanical equipment for the purpose of excavating or drilling, or to injury to or destruction of property at any time resulting therefrom.

The defendant, Hartford Accident & Indemnity Company, furthermore, states that, if any error or omission on the part of Harris & Ogus, Inc. causes Hartford Accident & Indemnity Company to be held liable to Lesmark, Inc., such error or omission by an agent of Hartford Accident & Indemnity Company would entitle Hartford Accident & Indemnity Company to exoneration from Harris & Ogus, Inc.

#### REQUESTED STIPULATION

That Lesmark, Inc. provide, within two weeks, to counsel for third-party and fourth-party defendants copies of all insuring documents and other writings upon which it intends to rely in the prosecution of its claim.

HOGAN & HARTSON

/s/ Paul R. Connolly

Attorneys for Fourth-Party Defendant, Hartford  
Accident & Indemnity Company

[Certificate of Service, 19 Oct. 1964]

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[Filed Oct. 23, 1964]

**PRE-TRIAL STATEMENT OF THIRD PARTY DEFENDANT  
AND FOURTH PARTY PLAINTIFF, HARRIS & OGUS, INC.**

(No. 2364-59)

This third party defendant and fourth party plaintiff admits being engaged in the insurance business and that at the time and place as alleged was a general agent of the Hartford Accident & Indemnity Company; it admits being requested by the third party plaintiff, Lesmark, Inc., to secure property damage coverage on the then existing Hartford Accident & Indemnity Company Policy No. 42 MCS 601753; admits that it placed this order for property damage coverage with its principal, the fourth party defendant, Hartford Accident & Indemnity Company; admits advising third party plaintiff, Lesmark, Inc., that it was then bound upon this property damage coverage in accordance with a general agent's binding authority.

This third party defendant and fourth party plaintiff, Harris & Ogus, Inc., has brought in the Hartford Accident & Indemnity Company, a corporation, as a fourth party defendant in this matter, averring that if the allegations of the original complaint and third party complaint are established and that the said fourth party defendant, Hartford Accident & Indemnity Company, a corporation, had, in fact, issued no policy of insurance to defendant and third party plaintiff, Lesmark, Inc., a corporation, then said fourth party defendant, Hartford Accident & Indemnity Company, breached its contract with its general agent, the third party defendant and fourth party plaintiff, Harris & Ogus, Inc., and/or, alternatively, the failure to issue said policy of insurance was the result of the carelessness and negligence of the fourth party defendant, Hartford Accident & Indemnity Company, which breach of contract and carelessness and negligence has caused the third party defendant and fourth party plaintiff, Harris & Ogus, Inc., to be named as a third party defendant in this action.

The aforesaid third party defendant and fourth party plaintiff, Harris & Ogus, Inc. has incurred substantial expenses in defending this litigation and in the event a judgment is secured against this third party defendant and fourth party plaintiff, Harris & Ogus, Inc., in this litigation, this third party defendant and fourth party plaintiff will be damaged in whatever amount is secured as a judgment against it, plus cost of defense and counsel fees.

WHEREFORE, this third party defendant and fourth party plaintiff, Harris & Ogus, Inc., demands judgment of and against the fourth party defendant, Hartford Accident & Indemnity Company, a corporation, for any and all sums that may be adjudged against it in favor of the third party plaintiff, Lesmark, Inc., plus costs and expenses incurred in the defense of this action, including reasonable attorneys' fees.

GALIHER, STEWART & CLARKE

By /s/ Frank J. Martell

Attorneys for Third Party Defendant and Fourth  
Party Plaintiff, Harris & Ogus, Inc.

[Certificate of Service, 21 Oct. 1964]

[Filed Oct. 23, 1964]

**PRETRIAL PROCEEDINGS**

No. 2364-59

No. 3506-59

**STATEMENT OF NATURE OF CASE:**

Oct. 22, 1964

Action to recover damages for breach of contract.

THE PARTIES AGREE TO THE FOLLOWING STATEMENT OF  
FACTS AND STIPULATE THERETO: It is agreed that action No. 3506-  
59 may be, and it is hereby, dismissed, all of the claims being merged  
into action No. 2364-59. It is further agreed that the caption of the case

may be and it hereby is changed to Lesmark, Inc., Plaintiff vs. Harris and Ogus, Inc., Defendant and Cross-Plaintiff against Hartford Accident and Indemnity Company, Defendant.

It is agreed that in the two Civil Action actions, to which reference has heretofore been made, there were judgments entered against Lesmark, Inc. which Lesmark was obligated to pay on behalf of Isabele C. Pryce in the amt. of \$21,400.

and in favor of Robert Ash in the amt. of \$3,472

and attorney's fee in favor of Walter S. Charron  
against Lesmark in the amt. of \$2,000

or a total of \$26,872.00.

Harris & Ogus, Inc., at all pertinent times, were engaged in the insurance business, and at times, placed policies of insurance obtained by it in or with the D Hartford Accident and Indemnity Co., a Connecticut corp. which, at all pertinent times, was engaged in business in the D of C.

The U. S. Ct. of Appeals for the D of C, decided certain aspects of the aforementioned cases on Apr. 9, 1964, No. 17739-40.

PLAINTIFF CLAIMS that Harris & Ogus, Inc., as insurance agents for it, agreed to secure appropriate insurance coverage to protect Lesmark, Inc. against claims asserted by reason of negligent construction or excavation on certain property on Eye St., N.W., Wash., D. C., and Harris & Ogus had advised Lesmark, Inc. that it had secured such insurance coverage from Hartford Accident and Indemnity Co. (hereinafter "Hartford").

P asserts that Harris & Ogus, Inc. was a general agent of Hartford authorized to bind Hartford to cover any liability of Lesmark in the type of operation which resulted in its being compelled to pay the judgments

referred to above.

Further, Harris & Ogus held itself out as an authorized agent of Hartford and had ostensible authority to act for Hartford.

Lesmark's claim against Harris & Ogus is based on the theory that they agreed to secure appropriate insurance coverage and failed to do so.

The claim against Hartford is based upon the theory that Harris & Ogus did in fact secure appropriate insurance from Hartford and that Hartford breached its obligation under the insurance policy to indemnify Lesmark.

P claims damages against Harris & Ogus, Inc. or Hartford or both for the amount of the judgments entered against Lesmark in the two actions referred to above, to wit, \$26,872 plus interest and costs.

In addition, Lesmark seeks legal fees in the amt. of \$8,000 to the date of this order for the defense and prosecution of the various actions involved therein.

DEFENDANT and THIRD PARTY PLAINTIFF, Harris & Ogus, Inc., BOTH IN DEFENSE OF THE CLAIM OF LESMARK, INC. AND IN SUPPORT OF ITS CLAIM AGAINST HARTFORD, admits being requested by Lesmark, Inc. to secure property damage coverage on the then-existing Hartford Accident & Indemnity Co. Policy No. 42 MCS 601753; admits that it placed this order for property damage coverage with its principal, Hartford Accident & Indemnity Co.; admits advising P. Lesmark, Inc. that it (Lesmark) was then bound upon this property damage coverage in accordance with a general agent's binding authority.

Further asserts that if the allegations of P are established and that Hartford had, in fact, issued no policy of insurance to D and Lesmark, Inc., then Hartford breached its contract with its general agent, Harris & Ogus, Inc., and/or, alternatively, the failure to issue said policy of



insurance was the result of the carelessness and negligence of Hartford, which breach of contract and carelessness and negligence has caused Harris & Ogus, Inc. to be named as a defendant in this action.

Harris & Ogus, Inc. has incurred substantial expenses in defending this litigation and in the event a judgment is secured against Harris & Ogus, Inc. in this litigation, it will be damaged in whatever amount is secured as a judgment against it, plus cost of defense and counsel fees.

Harris & Ogus demands judgment of and against Hartford for any and all sums which may be adjudged against it in favor of Lesmark, plus costs and expenses incurred in defense of this action, including reasonable attorney's fees.

Harris & Ogus asserts that Hartford is estopped from denying that Harris & Ogus was its general agent because both prior and subsequent to July 27, 1959, Hartford issued certificates of insurance for property damage coverage indemnifying Lesmark on other projects.

Harris and Ogus further contends that even if the certificate of insurance covering property damage had been issued, such a certificate of insurance would not have covered the type of loss out of which the judgments upon which this action is now based, arose. See policy exclusions, B,C,D,E,L,M.

DEFENDANT HARTFORD denies any liability to Lesmark, Inc. since it did not contract to furnish to Lesmark, Inc. either property damage insurance coverage or any insurance coverage which covered injury or destruction of property arising out of the collapse of or structural injury to any building or structure due to excavation, including borrowing, filling or back-filling in connection therewith, or to tunneling, pile driving, coffer-dam work or caisson work or to moving, shoring, underpinning, raising or demolition of any building or structure or removal or re-building of any structural support thereof, nor did it provide insurance coverage for injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property, or any apparatus in connection therewith, below the surface of the ground, if such in-

jury or destruction is caused by and occurs during the use of mechanical equipment for the purpose of excavating or drilling, or to injury to or destruction of property at any time resulting therefrom.

Hartford contends that it is responsible to Lesmark only in accordance with the terms and provisions of a policy of insurance designated MCS 601753 and endorsements from time to time made thereto.

It further denies that it is liable to Lesmark on account of any apparent or ostensible agency in Harris & Ogus. It says that Harris & Ogus was authorized to act as agent for it only in accordance with an agency agreement dated Apr. 1, 1957.

Hartford further contends that Lesmark was not liable for the injuries and damages sustained by Ps Pryce and Ash because the judgments entered against Lesmark are not binding on it; that in any event, Hartford is not liable for attorney's fees either as to Charron or as to Lesmark. Finally, Hartford contends that Lesmark has not mitigated its damages, and therefore, it is not entitled to interest, costs, appellate charges, etc.

Hartford denies liability as to Harris & Ogus, Inc. upon the grounds that Harris & Ogus was not authorized to provide gen. property damage insurance to Lesmark, Inc.

Harris & Ogus, Inc. did not request either property damage insurance for Lesmark, Inc. for its operations on Eye St., N.W., on July 29, 1959, nor did it request insurance from Hartford for injury to or destruction of any property arising out of the collapse of or structural injury to any building or structure due to excavation, including borrowing, filling or back-filling in connection therewith, or to tunneling, pile driving, coffer-dam work or caisson work or to moving, shoring, underpinning, raising or demolition of any building or structure or removal or re-building of any structural support thereof, nor did it provide insurance coverage for injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property, or any apparatus in connection therewith, below the surface of the ground, if such injury or

destruction is caused by and occurs during the use of mechanical equipment for the purpose of excavating or drilling, or to injury to or destruction of property at any time resulting therefrom.

Hartford denies any obligation to pay litigation expense to Harris & Ogus; denies any obligation to make indemnity.

Hartford further contends that the extent of the agency of Harris & Ogus is as contained in the agency agreement of April 1, 1957 between it and Harris & Ogus.

Hartford furthermore states that, if any error or omission on the part of Harris & Ogus, Inc. causes Hartford to be held liable to Lesmark, such error or omission by an agent of Hartford would entitle Hartford to exoneration from Harris & Ogus, Inc.

Harris & Ogus and Hartford each adopt defenses set out hereinabove by the other not specifically included in the defenses set out in their respective statements, if appropriate.

Harris & Ogus also asserts that Lesmark is not the real party in interest entitled to sue in this case.

#### STIPULATIONS

The parties agree to file with the Clerk of the Court and to mutually exchange, on or before Nov. 15, 1964, a list of the names and addresses of all witnesses known to them, including expert witnesses, who have knowledge of any aspect of this case indicating those who may be used at the trial. Impeachment witnesses are not to be included.

Counsel for Harris & Ogus agrees to supply to the Clerk of Ct. and counsel for Hartford on or before Nov. 15, 1964, a written statement as to whether Harris & Ogus requested Hartford to cover by a policy of insurance any liability or Lesmark for excavation at the Eye St. locus and if such request was made, the date of and by whom said request was made.

Following may be admitted in evidence without formal proof, subject to all legal objections: P-1, P-2, P-3 which is the policy of insurance issued to Lesmark, Inc. by Hartford; D-1.

Counsel for Harris & Ogus will answer interrogatories filed by Hartford on Dec. 11, 1962, on or before Nov. 15, 1964, or it is recommended that Harris & Ogus' claim against Hartford be dismissed.

Counsel for Hartford desires to take the depositions of Mrs. A. Patricia Taylor, and Harold Fineman of the Harris & Ogus Company.

Counsel for Harris & Ogus desires to take the depositions of Mr. James Cassidy, Paul Snodgrass, Wm. Winstead, Robert Bilbrey, Mrs. Delacey, all of whom were employees of Hartford.

These depositions may be taken provided however, no delay in the trial of the case results therefrom.

The Examiner has requested counsel for the parties to appear at trial with the maximum amount of authority to settle this case which will be allowed them by their principals.

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Pretrial Examiner

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[Filed March 19, 1965]

**MOTION TO INTERVENE**  
(Nos. 2364-59 and 3506-59)

Defendants Walter S. and Marie L. Charron move the Court for leave to intervene in the third party actions herein which were severed from the main action before the trial thereof pursuant to the provisions of Rule 24(a) F.R.C.P. and for reasons therefor say:

1. Defendant Lesmark, Inc. filed a third party complaint against third party defendant Harris & Ogus, Inc., which in turn filed a fourth party complaint against Hartford Accident & Indemnity Company, both seeking indemnity of any sums rendered against them in the main action. In the third party complaint it is alleged that the third party defendant failed to provide the requested insurance coverage for the claims asserted in the complaint. It is further alleged that third party defendant Harris & Ogus, Inc., an agent for the fourth party defendant Hartford Accident & Indemnity Company, had placed with that company an order for a policy of insurance to cover the claims asserted in the complaint.

2. The trial of the main action culminated in a judgment in the Pryce case in the principal amount of \$21,400, court costs of \$18.00 and in the Ash case in the principal amount of \$3,472.00, and court costs of \$13.00. These judgments were affirmed on appeal and satisfied by defendants Charron as evidenced by praecipe of the plaintiff filed herein. Thereafter judgment on the crossclaim in favor of defendants Charron against defendant Lesmark, Inc. for the sum of \$22,001.50 was entered on May 8, 1964 and judgment on the crossclaim of defendants Charron against defendant Lesmark, Inc. in the Ash case for \$3,580.48 was also entered on that day.

3. Counsel for defendants Charron is now advised that there is a proposed settlement of the third party actions for indemnification of the aforesaid amounts, totaling \$25,581.98 plus interest, between counsel for third party plaintiff Lesmark and third party defendant Harris &

Ogus, Inc. for the total sum of \$1500 and also that the fourth party action may be dismissed before the trial thereof.

4. Defendants Charron assert that the representation of its vested interest in this third party action by the aforesaid parties is inadequate within the meaning of Rule 24(a) F.R.C.P. and they would be bound by any judgment, settlement or dismissal in that action.

5. Counsel for defendants Charron was not aware of the proposed settlement until so advised by counsel for third party defendant Harris & Ogus, Inc. on March 4, 1965

WHEREFORE, the premises considered, defendants Walter S. and Marie L. Charron respectfully submit that their motion to intervene to protect their interest in the third party actions as aforesaid should be granted.

/s/ Justin L. Edgerton

/s/ John F. Mahoney, Jr.  
PLEDGER, EDGERTON & MAHONEY  
925 Washington Building  
Washington, D. C.  
Attorneys for defendants Charron

[Certificate of Service, 11 Mar. 1965]

[Filed March 31, 1965]

INTERROGATORIES TO INTERVENOR-MOVANTS  
(No. 2364-59)

TO: Walter S. and Marie L. Charron  
c/o Justin L. Edgerton and  
John F. Mahoney, Jr., Esquires  
925 Washington Building  
Washington, D. C.

The following interrogatories are served upon you pursuant to Rule 33, F.R.C.P. They are to be answered fully in writing by you, under



oath, within 15 days of their receipt unless the time is otherwise extended by agreement of counsel or order of Court. The information requested by these interrogatories is not only that which you personally possess, but also that which is known to your attorneys or other representatives.

1. Were you covered by public liability insurance for sums you became legally obligated to pay as damages to Isabel C. Pryce and Robert Ash because of injury to their buildings (located in Washington, D.C., at 1917 Eye Street, N.W., and 1921 Eye Street, N.W., respectively) during July, 1959?

a. If so, please state the name and address of your public liability insurance carrier.

2. Did your public liability insurance carrier pay the costs of defense and attorneys' fees in Civil Action No. 2364-59 and Civil Action No. 3506-59?

3. Did your public liability insurance carrier pay the judgments rendered against you in the above mentioned civil actions?

4. Did you use any of your own funds to pay the costs of defense and attorneys' fees or to satisfy the judgments rendered against you in these actions?

a. If so, state the nature of the expense and the amounts paid.

5. Did your public liability insurance contract contain a subrogation provision?

a. If so, state its text.

b. Has your public liability insurer become subrogated to any rights which you have possessed against Lesmark, Inc.?

c. Have you executed or delivered any documents to your public liability insurer to afford the insurer a right of subrogation?

d. Have you executed and delivered to your public liability insurer any documents which would permit you to maintain an action against Lesmark, Inc. in your own name? If so, describe these documents.

6. Have you levied, executed or filed liens against Lesmark, Inc.

in order to collect the judgments rendered in your favor against Lesmark, Inc. in Civil Action No. 2364-59 and Civil Action No. 3506-59?

a. State what other effort, if any, has been made by you to collect these judgments against Lesmark, Inc.

HOGAN & HARTSON

/s/ Paul R. Connolly

Attorneys for Third-Party Defendant, Hartford  
Accident & Indemnity Co.

[Certificate of Service  
March 30, 1965]

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[Filed Apr. 9, 1965]

**OBJECTIONS TO INTERROGATORIES TO  
INTERVENOR-MOVANTS WALTER S. and  
MARIE L. CHARRON**

(Nos. 2364-59 and 3506-59)

Walter S. and Marie L. Charron, by their undersigned attorneys of record, object to each and every interrogatory served upon them pursuant to Rule 33 F.R.C.P. by third-party defendant Hartford Accident & Indemnity Company and for reasons therefor say:

1. Interrogatories 1 through 5 relate to public liability insurance carried by Walter S. and Marie L. Charron and all facts and matters pertaining to such insurance are wholly immaterial and irrelevant to any issue presented by the pending motion of Walter S. and Marie Charron to intervene in this cause or with respect to the issues involved in the pending third-party complaint herein.

2. Interrogatory 6, relating to efforts made by Walter S. and Marie

JA 67

L. Charron to satisfy the judgments rendered herein in their favor against Lesmark, Inc., is likewise wholly immaterial and irrelevant.

/s/ Justin L. Edgerton

/s/ John F. Mahoney, Jr.

Attorneys for Intervenor-Movants Walter S.  
and Marie L. Charron

[Certificate of Service, 9 Apr. 1965]

---

## ATTACHMENT ON JUDGMENT

## United States District Court for the District of Columbia

ISABEL C. PRYCE

Plaintiff

vs.

WALTER E. CHARRON, MARIE L. CHARRON, and

LESMARK, INC.

Defendants.

OFFICE COPY

FILED September 14, 1965

Civil Action

No. 2364-59

The President of the United States, to the Marshal for said District—GREETING:

YOU ARE HEREBY COMMANDED to attach the goods, chattels, and credits of the defendant\*, if to be found in this District, of value sufficient to satisfy the plaintiff\*\* judgment against the defendant in this Court in the above-entitled cause, on the 21st day of November, 1962, for \$2,000.00 with interest from date and judgment on the 8th day of May, 1964 for \$22,001.50 with interest from May 22, 1963

for money payable to the ~~plaintiff~~ <sup>defendants Charron</sup> by the defendant, and \$\_\_\_\_\_ for costs; and the same so attached, safely keep and have before said Court, on or before the tenth day occurring after the execution of this writ, that the same may be condemned unless sufficient cause be shown to the contrary; and, if said goods, chattels, or credits be attached in the hands or possession of any person or persons other than the defendant, notify such person or persons of such seizure, and warn him or them to appear before said Court, within the time aforesaid, to show cause why the same should not be condemned and execution thereof had according to law, unless the credits so attached are wages as defined by Public Law 130, signed August 4, 1959, in which event the terms of the said Law must be observed. And have then there this writ, so endorsed as to show when and how you have executed it.

\*Lesmark, Inc.

\*\*Defendants Walter S. Charron  
and Marie L. CharronWITNESS, The Honorable Chief Judge of said Court  
the \_\_\_\_\_ day of September, 19 65

HARRY M. HULL, Clerk

By \_\_\_\_\_

Deputy Clerk.

## NOTICE

To Hartford Accident & Indemnity Company, 1000 Vermont Ave., N.W., Garnishee.

YOU ARE HEREBY NOTIFIED that any property or credits of \_\_\_\_\_

defendant Lesmark, Inc.

in your hands are seized by virtue of the foregoing writ of attachment, and you are hereby warned to appear in said Court, on or before the tenth day after service hereof, and show cause, if any there be, why the property or credits so attached should not be condemned and execution thereof had, unless the credits hereby attached are wages as defined by Public Law 130, signed August 4, 1959, in which event you are admonished to comply with the terms of that Law. A copy of the referred to

Law may be obtained from the Clerk of this Court upon request.

U. S. Marshal.

**MARSHAL'S RETURN**

Attached credits in the hands of \_\_\_\_\_

and served \_\_\_\_\_ with copies of this Writ, Interrogatories, and Notices as Garnishee of Defendant

*Justin L. Edgerton*  
Justin L. Edgerton ~~Plaintiff's~~ Attorney for defs.

U. S. Marshal in and for the  
District of Columbia.

Pledger, Edgerton & Mahoney Walter E. and Marie S. Charron  
925 Washington Building  
Washington, D. C. YPI-LX-6-13-62-OK-234

Interrogatories in Attachment

**United States District Court for the District of Columbia**

ISABEL C. PRYCE

, Plaintiff ,

vs.

WALTER E. CHARRON, MARIE L. CHARRON, and

LESMARK, INC.

, Defendants .

OFFICE COPY

FILED September 14, 196

CIVIL

~~RECEIVED~~

COURT No. 2364-59

**NOTICE**

To HARTFORD ACCIDENT & INDEMNITY COMPANY, 1000 Vermont Ave., N.W., Garnishee :

You are required to answer the following interrogatories, under Penalties of Perjury within ten days after service hereof. And should you neglect or refuse so to do, judgment may be entered against you for an amount sufficient to pay the plaintiff's

*claim, with interest and costs of suit.*

\_\_\_\_\_  
 Attorney for Plaintiff Defendant  
 Walter E. and Marie L. Ch

### INTERROGATORIES

1st. Were you at the time of the service of the writ of attachment served herewith, or have you been, between the time of such service and the filing of your answer to this interrogatory, indebted to the defendant? If so, how, and in what amount?

ANSWER: \_\_\_\_\_

2nd. Had you, at the time of the service of the writ of attachment, served herewith, or have you had, between the time of such service and the filing of your answer to this interrogatory, any goods, chattels, or credits of the defendant in your possession or charge? If so, what?

ANSWER: \_\_\_\_\_

3rd. In 1962, did you receive an order, request or other communication from Harris & Ogue, Inc. for public liability and property damage insurance to cover work to be performed by Lesmark, Inc. at 1919 Eye Street, N.W.?

ANSWER: \_\_\_\_\_

4th. If the answer to Interrogatory No. 3 is in the affirmative, did you issue or provide such insurance to cover Lesmark, Inc. for this job?

ANSWER: \_\_\_\_\_

I declare under the penalties of perjury that the answers to the above interrogatories are, to the best of my knowledge and belief, true and correct as to every material matter.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19\_\_\_\_

BEST COPY AVAILABLE

from the original bound volume



## ATTACHMENT ON JUDGMENT

## United States District Court for the District of Columbia

ROBERT ASH

Plaintiff

vs.

WALTER E. CHARRON, MARIE L. CHARRON, and

LESMARK, INC.

Defendants

OFFICE COPY

FILED September 14, 1965Civil Action  
No. 3506-59*The President of the United States, to the Marshal for said District—GREETING:*

YOU ARE HEREBY COMMANDED to attach the goods, chattels, and credits of the defendant\*, if to be found in this District, of value sufficient to satisfy the ~~plaintiff's~~ judgment against the defendant in this Court in the above-entitled cause, on the 8th day of May, 19 64, for \$3,580.48 with interest from May 22, 1963

~~plaintiff~~ defendants Charron  
for money payable to the ~~plaintiff~~ by the defendant, and \$\_\_\_\_\_ for costs; and the same so attached, safely keep and have before said Court, on or before the tenth day occurring after the execution of this writ, that the same may be condemned unless sufficient cause be shown to the contrary; and, if said goods, chattels, or credits be attached in the hands or possession of any person or persons other than the defendant, notify such person or persons of such seizure, and warn him or them to appear before said Court, within the time aforesaid, to show cause why the same should not be condemned and execution thereof had according to law, unless the credits so attached are wages as defined by Public Law 130, signed August 4, 1959, in which event the terms of the said Law must be observed. And have then there this writ, so endorsed as to show when and how you have executed it.

\*Lesmark, Inc.

\*\*Defendants Walter S. Charron  
and Marie L. CharronWITNESS, The Honorable Chief Judge of said Court  
the \_\_\_\_\_ day of September, 19 65

HARRY M. HULL, Clerk

By \_\_\_\_\_

Deputy Clerk.

## NOTICE

To Hartford Accident & Indemnity Company, 1000 Vermont Ave., N.W., Garnishee.

YOU ARE HEREBY NOTIFIED that any property or credits of \_\_\_\_\_  
defendant Lesmark, Inc.

in your hands are seized by virtue of the foregoing writ of attachment, and you are hereby warned to appear in said Court, on or before the tenth day after service hereof, and show cause, if any there be, why the property or credits so attached should not be condemned and execution thereof had, unless the credits hereby attached are wages as defined by Public Law 130, signed August 4, 1959, in which event you are admonished to comply with the terms of that Law. A copy of the referred to

Law may be obtained from the Clerk of this Court upon request.

\_\_\_\_\_  
U.S. Marshal.

**MARSHAL'S RETURN**

Attached credits in the hands of \_\_\_\_\_

and served \_\_\_\_\_ with copies of this Writ, Interrogatories, and Notices as Garnishes of Defendant \_\_\_\_\_

*Justin L. Edgerton*

Justin L. Edgerton ~~Plaintiff's~~ Attorney for defendants

U.S. Marshal in and for the  
District of Columbia.

Pleager, Edgerton & Mahoney Walter E. and Marie L. Charron

925 Washington Building

FFI-LX-412-02-2304

Washington, D. C.

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from the original bound volume

## ATTACHMENT ON JUDGMENT

## United States District Court for the District of Columbia

ISABEL C. PRYCE

Plaintiff

VI.

WALTER E. CHARRON, MARIE L. CHARRON, and

LESMARK, INC.

Defendants.

OFFICE COPY

FILED September 14, 1965Civil Action  
No. 2364-59*The President of the United States, to the Marshal for said District—GREETING:*

YOU ARE HEREBY COMMANDED to attach the goods, chattels, and credits of the defendant\*, if to be found in this District, of value sufficient to satisfy the ~~plaintiff's~~\*\* judgment against the defendant in this Court in the above-entitled cause, on the 21st day of November, 19 62, for \$ 2,000.00 with interest from date and judgment on the 8th day of May, 1964 for \$22,001.50 with interest from May 22, 1963

for money payable to the ~~plaintiff~~ defendants Charron by the defendant, and \$\_\_\_\_\_ for costs; and the same so attached, safely keep and have before said Court, on or before the tenth day occurring after the execution of this writ, that the same may be condemned unless sufficient cause be shown to the contrary; and, if said goods, chattels, or credits be attached in the hands or possession of any person or persons other than the defendant, notify such person or persons of such seizure, and warn him or them to appear before said Court, within the time aforesaid, to show cause why the same should not be condemned and execution thereof had according to law, unless the credits so attached are wages as defined by Public Law 130, signed August 4, 1959, in which event the terms of the said Law must be observed. And have then there this writ, so endorsed as to show when and how you have executed it.

\*Lesmark, Inc.

\*\*Defendants Walter S. Charron  
and Marie L. CharronWITNESS, The Honorable Chief Judge of said Court  
the \_\_\_\_\_ day of September, 19 65

HARRY M. HULL, Clerk

By \_\_\_\_\_  
Deputy Clerk.

## NOTICE

To HARRIS & OGUS, INC., 1420 K Street, N.W., Washington, D.C., Garnishee.YOU ARE HEREBY NOTIFIED that any property or credits of \_\_\_\_\_  
defendant Lesmark, Inc.

in your hands are seized by virtue of the foregoing writ of attachment, and you are hereby warned to appear in said Court, on or before the tenth day after service hereof, and show cause, if any there be, why the property or credits so attached should not be condemned and execution thereof had, unless the credits hereby attached are wages as defined by Public Law 130, signed August 4, 1959, in which event you are admonished to comply with the terms of that Law. A copy of the referred to

Law may be obtained from the Clerk of this Court upon request.

\_\_\_\_\_  
*U. S. Marshal.*

**MARSHAL'S RETURN**

Attached credits in the hands of \_\_\_\_\_

\_\_\_\_\_ and served \_\_\_\_\_ with copies of this Writ, Interrogatories, and Notices as Garnishee of Defendant  
\_\_\_\_\_  
\_\_\_\_\_

*Justin L. Edgerton*  
Justin L. Edgerton ~~Plaintiff~~ Attorney. for defendants U.S. Marshal in and for the  
Pledger, Edgerton & Mahoney Walter E. and Marie L. Charron District of Columbia.  
925 Washington Building  
Washington, D. C. FPI-LK-8-12-68-02-2394

Interrogatories in Attachment**United States District Court for the District of Columbia**

ISABEL C. PRYCE

, Plaintiff ,

vs.

WALTER E. CHARRON, MARIE L. CHARRON and

LESMARK, INC.

, Defendant s.

OFFICE COPY

FILED

September 14, 1965

CIVIL

~~MECHANICAL~~

COURT No. 2364-59

**NOTICE**To HARRIS & OGUS, INC., 1420 K Street, N.W., Washington, D. C., Garnishee :

*You are required to answer the following interrogatories, under Penalties of Perjury within ten days after service hereof. And should you neglect or refuse so to do, judgment may be entered against you for an amount sufficient to pay the plaintiff's claim, with interest and costs of suit.*

\_\_\_\_\_  
 Attorney for Plaintiff. defendants  
 Walter E. and Marie L. Charron

**INTERROGATORIES**

1st. Were you at the time of the service of the writ of attachment served herewith, or have you been, between the time of such service and the filing of your answer to this interrogatory, indebted to the defendant ? If so, how, and in what amount?

ANSWER: \_\_\_\_\_

2nd. Had you, at the time of the service of the writ of attachment, served herewith, or have you had, between the time of such service and the filing of your answer to this interrogatory, any goods, chattels, or credits of the defendant in your possession or charge? If so, what?

ANSWER: \_\_\_\_\_

3rd. In 1962, did Michael M. Abrams or anyone else employed by or acting for Lesmark, Inc. request you to order or place public liability and property damage insurance to cover work to be done by Lesmark, Inc. at 1919 Eye Street, N.W. under contract with Walter L. and Marie S. Charron?

ANSWER: \_\_\_\_\_

4th. If the answer to Interrogatory No. 3 is in the affirmative, did you order or place such insurance for Lesmark, Inc. and with what insurance company?

ANSWER: \_\_\_\_\_

I declare under the penalties of perjury that the answers to the above interrogatories are, to the best of my knowledge and belief, true and correct as to every material matter.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19\_\_\_\_



## ATTACHMENT ON JUDGMENT

## United States District Court for the District of Columbia

ROBERT ASH

Plaintiff

vs.

WALTER E. CHARRON, MARIE L. CHARRON, and

LESMARK, INC.

Defendant

OFFICE COPY

FILED September 14, 1965Civil Action  
No. 3506-59*The President of the United States, to the Marshal for said District—GREETING:*

YOU ARE HEREBY COMMANDED to attach the goods, chattels, and credits of the defendant\*, if to be found in this District, of value sufficient to satisfy the ~~plaintiff's~~\*\* judgment against the defendant in this Court in the above-entitled cause, on the 8th day of May, 19 64, for \$ 3,580.48 with interest from May 22, 1963

defendants Charron  
for money payable to the ~~plaintiff~~ by the defendant, and \$\_\_\_\_\_ for costs; and the same so attached, safely keep and have before said Court, on or before the tenth day occurring after the execution of this writ, that the same may be condemned unless sufficient cause be shown to the contrary; and, if said goods, chattels, or credits be attached in the hands or possession of any person or persons other than the defendant, notify such person or persons of such seizure, and warn him or them to appear before said Court, within the time aforesaid, to show cause why the same should not be condemned and execution thereof had according to law, unless the credits so attached are wages as defined by Public Law 130, signed August 4, 1959, in which event the terms of the said Law must be observed. And have then there this writ, so endorsed as to show when and how you have executed it.

\*Lesmark, Inc.

\*\*Defendants Walter S. Charron  
and Marie L. CharronWITNESS, The Honorable Chief Judge of said Court  
the \_\_\_\_\_ day of September, 19 65

HARRY M. HULL, Clerk

By \_\_\_\_\_  
Deputy Clerk.

## NOTICE

To Harris & Ogus, Inc., 1420 K Street, N.W., Washington, D. C., Garnishee.YOU ARE HEREBY NOTIFIED that any property or credits of \_\_\_\_\_  
defendant Lesmark, Inc.

in your hands are seized by virtue of the foregoing writ of attachment, and you are hereby warned to appear in said Court, on or before the tenth day after service hereof, and show cause, if any there be, why the property or credits so attached should not be condemned and execution thereof had, unless the credits hereby attached are wages as defined by Public Law 130, signed August 4, 1959,

in which event you are admonished to comply with the terms of that Law. A copy of the referred to Law may be obtained from the Clerk of this Court upon request.

\_\_\_\_\_  
U. S. Marshal.

**MARSHAL'S RETURN**

Attached credits in the hands of \_\_\_\_\_

and served \_\_\_\_\_ with copies of this Writ, Interrogatories, and Notices as Garnishee of Defendant

\_\_\_\_\_  
Justin L. Edgerton

Justin L. Edgerton ~~Plaintiff's~~ Attorney. for defendants

U.S. Marshal in and for the  
District of Columbia.

Pledger, Edgerton & Mahoney

Walter E. and Marie L. Charron

925 Washington Building

FPI-LK-8-12-43-CE-2204

Washington, D. C.

Interrogatories in Attachment

**United States District Court for the District of Columbia**

ROBERT ASH

, Plaintiff ,

vs.

WALTER E. CHARRON, MARIE L. CHARRON and

LESMARK, INC.

, Defendants .

OFFICE COPY

FILED September 14, 1969

CIVIL

~~MUNICIPAL~~

COURT No. 3506-59

**NOTICE**

To HARRIS & OGUS, INC., 1420 K Street, N.W., Washington, D. C., Garnishee :

*You are required to answer the following interrogatories, under Penalties of Perjury within ten days after service hereof. And should you neglect or refuse so to do, judgment may be entered against you for an amount sufficient to pay the plaintiff's claim, with interest and costs of suit.*

Attorney for ~~Plaintiff~~ Defendants  
Walter E. and Marie L. Charron

**INTERROGATORIES**

1st. Were you at the time of the service of the writ of attachment, served herewith, or have you been, between the time of such service and the filing of your answer to this interrogatory, indebted to the defendant ? If so, how, and in what amount?

ANSWER: \_\_\_\_\_

2nd. Had you, at the time of the service of the writ of attachment, served herewith, or have you had, between the time of such service and the filing of your answer to this interrogatory, any goods, chattels, or credits of the defendant in your possession or charge? If so, what?

ANSWER: \_\_\_\_\_

3rd. In 1962, did Michael M. Abrams or anyone else employed by or acting for Lesmark, Inc. request you to order or place public liability and property damage insurance to cover work to be done by Lesmark, Inc. at 1919 Eye Street, N.W. under contract with Walter L. and Marie S. Charron?

ANSWER:

4th. If the answer to Interrogatory No. 3 is in the affirmative, did you order or place such insurance for Lesmark, Inc. and with what insurance company?

ANSWER:

I declare under the penalties of perjury that the answers to the above interrogatories are, to the best of my knowledge and belief, true and correct as to every material matter.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19\_\_\_\_

[Filed Sept. 22, 1965]

**ORDER**

(No. 2364-59)

Upon consideration of motion of Walter S. and Marie L. Charron for leave to intervene in the pending action, memorandum of points and authorities in support thereof, opposition thereto filed on behalf of third party defendant Hartford Accident and Indemnity Company and after argument in open Court and the Court being of the opinion that the proper remedy for the movants is to prosecute their claims in a garnishment proceeding, it is this 22nd day of September, 1965.

ORDERED, that the motion of Walter S. and Marie L. Charron for leave to intervene be, and it hereby is, denied, and it is further

ORDERED, that all proceedings in this action be, and they hereby are, stayed, pending a disposition of the garnishment proceedings now instituted in the Court against Harris & Ogus, Inc. and Hartford Accident and Indemnity Company, provided that said proceedings are conducted with all convenient speed.

BY THE COURT,

/s/ Alexander Holtzoff  
Judge

[Certificate of Service, 14 Sept. 1965]

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[Filed Sept. 23, 1965]

**ANSWERS OF HARTFORD ACCIDENT  
& INDEMNITY COMPANY, GARNISHEE,  
TO INTERROGATORIES IN ATTACHMENT  
(No. 3506-59)**

1. Were you at the time of the service of the writ of attachment served herewith, or have you been, between the time of such service and the filing of your answer to this interrogatory, indebted to the defendant?

ANSWER: No

2. Had you, at the time of the service of the writ of attachment, served herewith, or have you had, between the time of such service and the filing of your answer to this interrogatory, any goods, chattels, or credits of the defendant in your possession or charge? If so, what?

ANSWER: No

3. In 1962, did you receive an order, request or other communication from Harris & Ogus, Inc. for public liability and property damage insurance to cover work to be performed by Lesmark, Inc. at 1919 Eye Street, N.W.?

ANSWER: No

4. If the answer to Interrogatory No. 3 is in the affirmative, did you issue or provide such insurance to cover Lesmark, Inc. for this job?

ANSWER: No

SUPPLEMENTARY ANSWER: The attaching creditor is directed to the pretrial statement of October 22, 1964, in Lesmark, Inc., v. Harris & Ogus, Inc. et al, Civil Action No. 2364-59, for a more detailed statement of the garnishee's position.

I, George Allen, Claims Manager of the Washington Regional Office of the Hartford Accident & Indemnity Company, am authorized to answer



the foregoing questions, and the answers are, to the best of my knowledge, information and belief, true and correct.

/s/ George Allen  
Claims Manager

[Jurat]

[Certificate of Service, 23 Sept. 1965]

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[Filed Sept. 24, 1965]

**ANSWERS OF WALTER OGUS, INC., SUCCESSOR  
TO HARRIS & OGUS, INC., GARNISHEE, TO  
INTERROGATORIES IN ATTACHMENT.**

(No. 3506-59)

1. Were you at the time of the service of the writ of attachment, served herewith, or have you been, between the time of such service and the filing of your answer to this interrogatory, indebted to the defendant? If so, how, and in what amount?

ANSWER: No.

2. Had you, at the time of the service of the writ of attachment, served herewith, or have you had, between the time of such service and the filing of your answer to this interrogatory, any goods, chattels, or credits of the defendant in your possession or charge? If so, what?

ANSWER: No.

3. In 1962, did Michael M. Abrams or anyone else employed by or acting for Lesmark, Inc. request you to order or place public liability and property damage insurance to cover work to be done by Lesmark, Inc. at 1919 Eye Street, N.W. under contract with Walter L. and Marie S. Charron?

ANSWER: No. As has been set forth in the Pretrial Statement of this party as filed in Civil Action No. 2364-59, Michael M. Abrams was the insured on an existing Hartford Accident & Indemnity Policy No.

42MCS601753, and did request Harris & Ogus, Inc., to secure property damage coverage on this existing policy. For further amplification, see depositions of Harold Fineman and A. Patricia Taylor, as taken by counsel for third party defendant, Hartford Accident & Indemnity Company, on November 25, 1964, in Civil Action No. 2364-59. It should be noted that excavation coverage was specifically excluded under this type of policy, and that no excavation coverage had ever been ordered by Mr. Abrams.

4. If the answer to Interrogatory No. 3 is in the affirmative, did you order or place such insurance for Lesmark, Inc., and with what insurance company?

ANSWER: See answer to No. 3 above. The order for property damage coverage was placed with Hartford Accident & Indemnity Company. However, as has been previously set forth, no excavation coverage was ordered since it had not been specified by Mr. Abrams.

WALTER OGUS, INC.

\* \* \*

/s/ Harold Fineman  
Vice President

[Jurat]

[Certificate of Service, 24 Sept. 1965]

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[Filed Sept. 24, 1965]

**ANSWERS OF WALTER OGUS, INC., SUCCESSOR  
TO HARRIS & OGUS, INC., GARNISHEE,  
TO INTERROGATORIES IN ATTACHMENT  
(No. 2364-59)**

1. Were you at the time of the service of the writ of attachment, served herewith, or have you been, between the time of such service and the filing of your answer to this interrogatory, indebted to the defendant? If so, how, and in what amount?

ANSWER: No.

2. Had you, at the time of the service of the writ of attachment, served herewith, or have you had, between the time of such service and the filing of your answer to this interrogatory, any goods, chattels, or credits of the defendant in your possession or charge? If so, what?

ANSWER: No.

3. In 1962, did Michael M. Abrams or anyone else employed by or acting for Lesmark, Inc. request you to order or place public liability and property damage insurance to cover work to be done by Lesmark, Inc. at 1919 Eye Street, N.W. under contract with Walter L. and Marie S. Charron?

ANSWER: No. As has been set forth in the Pretrial Statement of this party as filed in Civil Action No. 2364-59, Michael M. Abrams was the insured on an existing Hartford Accident & Indemnity Policy No. 42 MCS601753, and did request Harris & Ogus, Inc., to secure property damage coverage on this existing policy. For further amplification, see depositions of Harold Fineman and A. Patricia Taylor, as taken by counsel for third party defendant, Hartford Accident & Indemnity Company, on November 25, 1964, in Civil Action No. 2364-59. It should be noted that excavation coverage was specifically excluded under this type of policy, and that no excavation coverage had ever been ordered by Mr. Abrams.

4. If the answer to Interrogatory No. 3 is in the affirmative, did you order or place such insurance for Lesmark, Inc., and with what insurance company?

ANSWER: See answer to No. 3 above. The order for property damage coverage was placed with Hartford Accident & Indemnity Company. However, as has been previously set forth, no excavation coverage was ordered since it had not been specified by Mr. Abrams.

WALTER OGUS, INC.

By /s/ Harold Fineman  
Vice President

\* \* \*

[Jurat]

[Certificate of Service, 24 Sept. 1965]

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[Filed Oct. 5, 1965]

**TRAVERSE TO ANSWERS OF HARTFORD ACCIDENT  
& INDEMNITY COMPANY, GARNISHEE**

(No. 2364-59)

NOW COME Walter S. Charron and Marie L. Charron, by their attorneys, and for traverse to the answers of Hartford Accident & Indemnity Company, garnishee, filed herein, says that at the time of service of the writ of attachment, said garnishee was indebted to Lesmark, Inc. by reason of either its negligence or its breach of contractual duty with its general agent, Harris & Ogus, Inc. to issue or provide adequate and necessary property damage insurance coverage for construction work to be performed by Lesmark, Inc., at 1919 Eye Street, N. W., under

contract with said Walter S. and Marie L. Charron, although the order for such insurance was given by Lesmark, Inc. to Harris & Ogus, Inc.; and for the further reason that subsequent to the placing of said order for insurance for this work Lesmark, Inc. was advised by Harris & Ogus, Inc., as general agent of the garnishee, that said insurance had been obtained and was in force, and in reliance thereon Lesmark, Inc. did proceed with said construction work and did not seek to obtain insurance coverage elsewhere, as appears of record herein, particularly in the answer of Harris & Ogus, Inc. to the third-party complaint of Lesmark, Inc., and in the pretrial statement filed herein in behalf of Harris & Ogus, Inc. It is admitted of record that Harris & Ogus, Inc. is engaged in the insurance business as a general agent of garnishee; that it admits being requested by Lesmark, Inc. to secure property damage insurance coverage; that it placed this order with the garnishee and thereafter advised Lesmark, Inc. that it was then bound upon this additional property damage coverage in accordance with its binding authority as a general agent.

For the foregoing reasons said garnishee is indebted to Lesmark, Inc. for all sums claimed in the third-party complaint herein, and specifically the judgments rendered in the main action in this proceeding in favor of said Walter S. Charron and Marie L. Charron in the aggregate amount of \$27,581.98, interest and costs, and, accordingly, said Walter S. Charron and Marie L. Charron hereby traverse the answers of the said garnishee that it is not indebted to Lesmark, Inc.

PLEDGER, EDGERTON & MAHONEY

By /s/ Justin L. Edgerton  
Attorneys for Walter S. Charron  
and Marie L. Charron

[Certificate of Service, 4 Oct. 1965]

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[Filed Oct. 5, 1965]

**TRAVERSE TO ANSWERS OF HARTFORD  
ACCIDENT & INDEMNITY COMPANY, GARNISHEE**

(No. 3506-59)

NOW COME Walter S. Charron and Marie L. Charron, by their attorneys, and for traverse to the answers of Hartford Accident & Indemnity Company, garnishee, filed herein, says that at the time of service of the writ of attachment, said garnishee was indebted to Lesmark, Inc. by reason of either its negligence or its breach of contractual duty with its general agent, Harris & Ogus, Inc., to issue or provide adequate and necessary property damage insurance coverage for construction work to be performed by Lesmark, Inc., at 1919 Eye Street, N.W., under contract with said Walter S. and Marie L. Charron, although the order for such insurance was given by Lesmark, Inc. to Harris & Ogus, Inc.; and for the further reason that subsequent to the placing of said order for insurance for this work Lesmark, Inc. was advised by Harris & Ogus, Inc., as general agent of the garnishee, that said insurance had been obtained and was in force, and in reliance thereon Lesmark, Inc. did proceed with said construction work and did not seek to obtain insurance coverage elsewhere, as appears of record herein, particularly in the answer of Harris & Ogus, Inc. to the third-party complaint of Lesmark, Inc., and in the pretrial statement filed herein in behalf of Harris & Ogus, Inc. It is admitted of record that Harris & Ogus, Inc. is engaged in the insurance business as a general agent of garnishee; that it admits being requested by Lesmark, Inc. to secure property damage insurance coverage; that it placed this order with the garnishee and thereafter advised Lesmark, Inc. that it was then bound upon this additional property damage coverage in accordance with its binding authority as a general agent.

For the foregoing reasons said garnishee is indebted to Lesmark, Inc. for all sums claimed in the third-party complaint herein, and spe-



cifically the judgments rendered in the main action in this proceeding in favor of said Walter S. Charron and Marie L. Charron in the aggregate amount of \$27,581.98, interest and costs, and, accordingly, said Walter S. Charron and Marie L. Charron hereby traverse the answers of the said garnishee that it is not indebted to Lesmark, Inc.

**PLEDGER, EDGERTON & MAHONEY**

By /s/ Justin L. Edgerton

Attorneys for Walter S. Charron  
and Marie L. Charron

[Certificate of Service, 4 Oct. 1965]

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[Filed Oct. 5, 1965]

**TRAVERSE TO ANSWERS OF WALTER OGUS, INC.,  
SUCCESSOR TO HARRIS & OGUS, INC., GARNISHEE  
(No. 3506-59)**

NOW COME Walter S. Charron and Marie L. Charron, by their attorneys, and for traverse to the answers of Walter Ogus, Inc., garnishee, filed herein, says that at the time of service of the writ of attachment, said garnishee as successor to Harris & Ogus, Inc., was indebted to Lesmark, Inc. by reason of the negligent failure of Harris & Ogus, Inc., as general agent of the Hartford Accident & Indemnity Company, to obtain adequate and necessary property damage insurance coverage for construction work to be performed by Lesmark, Inc., under contract with said Walter S. and Marie L. Charron, at 1919 Eye Street, N.W., although the order or request for such insurance was made by Lesmark, Inc.; and for the further reason that subsequent to the placing of said order for insurance for this work Lesmark, Inc. was advised by Harris & Ogus, Inc. that said insurance had been obtained and was in force, and in reliance thereon Lesmark, Inc. did proceed with said construc-

tion work and did not seek to obtain insurance coverage elsewhere, all of which appears of record herein, particularly in the answer of Harris & Ogus, Inc. to the third-party complaint of Lesmark, Inc., and in the pretrial statement filed herein in behalf of Harris & Ogus, Inc. It is admitted of record that Harris & Ogus, Inc. was engaged in the insurance business as a general agent of Hartford Accident & Indemnity Company; that it was requested by Lesmark, Inc. to secure property damage insurance coverage; that it placed this order with the Hartford Accident & Indemnity Company and thereafter advised Lesmark, Inc. that it was then bound upon this additional property damage coverage in accordance with its binding authority as a general agent.

For the foregoing reasons said garnishee, as successor to Harris & Ogus, Inc., is indebted to Lesmark, Inc. for all sums claimed in the third-party complaint herein, and specifically for the judgments rendered in the main action in favor of said Walter S. Charron and Marie L. Charron in the aggregate amount of \$27,581.98, interest and costs, and, accordingly, said Walter S. Charron and Marie L. Charron hereby traverse the answers of the said garnishee that it is not indebted to Lesmark, Inc.

PLEDGER, EDGERTON & MAHONEY

By /s/ Justin L. Edgerton

Attorneys for Walter S. &  
Marie L. Charron

[Certificate of Service, 4 Oct. 1965]

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[Filed Oct. 5, 1965]

**TRAVERSE TO ANSWERS OF WALTER OGUS, INC.,  
SUCCESSOR TO HARRIS & OGUS, INC., GARNISHEE**

(No. 2364-59)

NOW COME Walter S. Charron and Marie L. Charron, by their attorneys, and for traverse to the answers of Walter Ogus, Inc., garnishee, filed herein, says that at the time of service of the writ of attachment, said garnishee as successor to Harris & Ogus, Inc., was indebted to Lesmark, Inc. by reason of the negligent failure of Harris & Ogus, Inc., as general agent of the Hartford Accident & Indemnity Company, to obtain adequate and necessary property damage insurance coverage for construction work to be performed by Lesmark, Inc., under contract with said Walter S. and Maria L. Charron, at 1919 Eye Street, N.W., although the order or request for such insurance was made by Lesmark, Inc.; and for the further reason that subsequent to the placing of said order for insurance for this work Lesmark, Inc. was advised by Harris & Ogus, Inc. that said insurance had been obtained and was in force, and in reliance thereon Lesmark, Inc. did proceed with said construction work and did not seek to obtain insurance coverage elsewhere, all of which appears of record herein, particularly in the answer of Harris & Ogus, Inc. to the third-party complaint of Lesmark, Inc., and in the pretrial statement filed herein in behalf of Harris & Ogus, Inc. It is admitted of record that Harris & Ogus, Inc. was engaged in the insurance business as a general agent of Hartford Accident & Indemnity Company; that it was requested by Lesmark, Inc. to secure property damage insurance coverage; that it placed this order with the Hartford Accident & Indemnity Company and thereafter advised Lesmark, Inc. that it was then bound upon this additional property damage coverage in accordance with its binding authority as a general agent.

For the foregoing reasons said garnishee, as successor to Harris

& Ogus, Inc., is indebted to Lesmark, Inc. for all sums claimed in the third-party complaint herein, and specifically for the judgments rendered in the main action in favor of said Walter S. Charron and Marie L. Charron in the aggregate amount of \$27,581.98, interest and costs, and, accordingly, said Walter S. Charron and Marie L. Charron hereby traverse the answers of the said garnishee that it is not indebted to Lesmark, Inc.

PLEDGER, EDGERTON & MAHONEY

By /s/ Justin L. Edgerton

[Certificate of Service, 4 Oct. 1965]

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[Filed Nov. 7, 1966]

**STATEMENT OF HARTFORD ACCIDENT  
& INDEMNITY COMPANY, GARNISHEE**

(No. 3506-59)

1. Any rights possessed by Walter S. and Marie L. Charron are to be derived solely from such rights as may be possessed by Lesmark, Inc. Lesmark, Inc., has no valid claim against Hartford Accident & Indemnity Co. for reasons set forth in the previous Pretrial Statement in this action, that is the pretrial of October 22, 1964.

2. Moreover, Lesmark, Inc., has settled its claim with Harris & Ogus, Inc., which settlement has the effect of also releasing Hartford Accident & Indemnity Co.

3. The garnishors, Walter S. and Marie L. Charron, do not have standing to prosecute their traverse since neither of them is a proper

creditor of Lesmark, Inc. The proper creditor is Aetna Casualty & Surety Co., which alone can prosecute this action.

HOGAN & HARTSON

By Paul R. Connolly  
Attorneys for Hartford  
Accident & Indemnity Co.

[Certificate of Service, 4 Nov. 1966]

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[Filed Nov. 9, 1966] **PRE-TRIAL PROCEEDINGS**  
**TRAVERSE PROCEEDING.**

Nov. 8, 1966

**THE PARTIES AGREE TO THE FOLLOWING STATEMENT OF  
FACTS AND STIPULATE THERETO:**

Defendant Lesmark, Inc. filed a third-party complaint against third party D Harris & Ogus, Inc., which in turn filed a fourth-party complaint against Hartford Accident & Indemnity Company, both seeking indemnity of any sums rendered against them in the main action. The trial of the main action culminated in a judgment in the Pryce case in the principal amount of \$21,400.00 and court costs of \$18.00, and in the Ash case in the principal amount of \$3,472.00 and court costs of \$13.00. These judgments were affirmed on appeal and satisfied by Ds Charron. Thereafter, judgment on the crossclaim in favor of defendants Charron against D Lesmark, Inc. in the Pryce case for the sum of \$22,001.50 was entered on May 8, 1964, and judgment on the crossclaim of Ds Charron against D Lesmark, Inc. in the Ash case for \$3,580.48 was also entered on that day.

Subsequently, counsel for Ds Charron move to intervene, the motion was argued before Judge Holtzoff and denied on Sept. 22, 1965, with the proviso, however, that all proceedings in this action shall be stayed

pending a disposition of the garnishment proceedings instituted by the Charrons against Harris & Ogus, Inc. and Hartford Accident and Indemnity Company then pending.

The garnishors Walter S. and Marie Charron and their insurer Aetna Casualty and Surety Company assert that Aetna satisfied the judgments in the Pryce and Ash cases referred to above. By virtue of the payment Aetna became subrogated to the rights of the Charrons.

When Counsel for Ds Charron was advised of a proposed settlement of the third-party actions for indemnification totalling \$25,581.98 plus interest, between counsel for D - third party plaintiff Lesmark, Inc. and third-party D Harris and Ogus, Inc. for the total sum of \$1,500.00 and also that the fourth party action Harris & Ogus vs. Hartford might be dismissed before trial, was the time they moved to intervene.

The garnishors assert that Walter Ogus, Inc. was indebted to Lesmark, Inc. by reason of the former's negligent failure, as general agent of Hartford to issue or provide adequate and necessary property damage insurance coverage for construction work to be performed by Lesmark, Inc. at 1919 I St., N.W., under contract with said Walter S. and Marie L. Charron, and for the further reason that subsequent to the placing of said order for insurance for this work Lesmark, Inc. was advised by Harris & Ogus, Inc. that said insurance had been obtained and was in force, and in reliance thereon Lesmark, Inc. did proceed with said work and did not seek to obtain insurance coverage elsewhere. As appears of record herein, particularly in the answer of Harris & Ogus, Inc. to the third-party complaint of Lesmark, Inc., and in the pre-trial statement of Harris & Ogus, Inc., it is admitted of record that Harris & Ogus, Inc. was engaged in the insurance business as a general agent of Hartford Accident and Indemnity Company; that it was requested by Lesmark, Inc. to secure property damage insurance; that it placed this order with Hartford Accident and Indemnity Company and thereafter advised Lesmark, Inc. that it was then "bound upon" this additional property damage coverage in accordance with its binding author-



ity as a general agent.

A traverse was also issued to answers of Hartford Accident and Indemnity Company that it was not indebted to Lesmark, Inc.

If the contentions of Walter Ogus, Inc. are not sustained that Hartford Accident and Indemnity Company breached its contract to insure Lesmark, Inc. or Hartford was otherwise negligent, nevertheless Hartford Accident and Indemnity Co. is liable vicariously to Lesmark, Inc. for the negligent acts or omissions of its general agent Walter Ogus, Inc. as successor to Harris, & Ogus, Inc. to wit \$25,581.98 plus interest and costs.

With respect to the alleged settlement of Walter Ogus, Inc. with Lesmark, Inc. the Charrons and Aetna Casualty and Surety Co. aver that it is void and a nullity for:

1. It was not made by or on behalf of the real party in interest Aetna Casualty and Surety Co., and
2. It contravened the Court's stay order of Sept. 22, 1965.

AETNA CASUALTY AND SURETY COMPANY moves to be substituted for the Charrons on the basis that it is the real party in interest having paid and satisfied the judgments against the Charrons who have a judgment for indemnity against Lesmark, Inc. Motion made in accordance with Rule 17 (a) Federal Rules of Civil Procedure, eff. July 1, 1966.

Over the objections of the Hartford Accident and Walter Ogus, Inc. the Examiner recommends that said motion be allowed.

THE DEFENDANT WALTER OGUS, INC. SUCCESSOR TO D HARRIS & OGUS, INC. asserts that D and third party P, Lesmark, Inc., settled its claim against third party D, Harris and Ogus, Inc.

Since Lesmark, Inc. now has no claim, the garnishors, Walter S. and Marie L. Charron and Robert Ash, have no standing to prosecute

their traverse. As an additional defense, third party defendant, Walter Ogus, Inc., avers that Walter S. and Marie L. Charron and Walter Ash are not properly parties to this action.

In any event this D asserts that Aetna is not a proper party in this action because the asserted subrogation did not take place until after the settlement between Ogus and Lesmark with the original P; further asserts that Hartford is liable to Ogus either due to the terms of the policy Ogus issued to cover Lesmark in the Hartford Co. or that Hartford is liable to Ogus due to Hartford's failure to issue that policy; that Ogus admits telling Lesmark that there was insurance coverage for property damage covering Lesmark on the job in question; that Ogus was the general agent for Hartford and at all pertinent times; that Hartford did issue policies of insurance covering Lesmark pursuant to Ogus's order; that Ogus has settled the 3rd Pty claim of Lesmark against Ogus by payment of \$1,500.00, and therefore Ogus is no longer a proper defendant; that in the event a judgment is granted against Ogus, then Ogus demands judgment in that amount against Hartford; that the garnishment action of Charron is an improper proceeding because an attempt is thereby being made to dispose of a negligence action by way of garnishment proceedings and should Aetna be allowed to be substituted that a new complaint should be filed.

HARTFORD ACCIDENT & INDEMNITY COMPANY, Garnishee, asserts that any rights possessed by Walter S. and Marie L. Charron are to be derived solely from such rights as may be possessed by Lesmark, Inc. Lesmark, Inc., has no valid claim against Hartford Accident & Indemnity Co. for reasons set forth in the previous Pretrial Statement in this action, that is the pretrial of Oct. 22, 1964. Moreover, Lesmark, Inc., has settled its claim with Harris & Ogus, Inc., which settlement has the effect of also releasing Hartford Accident & Indemnity Co.

The garnishors, Walter S. and Marie L. Charron, do not have stand-

ing to prosecute their traverse since neither of them is a real party in interest.

Hartford further adopts all defenses set out hereinabove by Ogus and asserts them as its defenses except wherein they may conflict with the affirmative defenses set out herein by it.

HARTFORD MOVES TO ADD A CROSSCLAIM AGAINST WALTER OGUS, INC. in the event that Hartford is held liable solely because it is found that Harris & Ogus, Inc. was a general agent of Hartford (i.e., vicarious responsibility) for the amount of any judgment which might be rendered against it.

The Examiner recommends that this motion be allowed.

Walter OGUS, INC. objects to the recommendation of the Examiner made hereinabove and, should the Court adopt the recommendation, it denies any liability to Hartford on the bases claimed or any other.

#### STIPULATIONS

It is agreed that insofar as the garnishment is concerned that there may be a consolidation of these actions.

It is agreed that Aetna Casualty and Surety Co. has satisfied the judgments rendered against the Charrons in the total sum of \$25,581.-98.

The parties agree to file with the Clerk of the Court and to mutually exchange, on or before November 25, 1966, a list of the names and addresses of witnesses known to them including medical and expert witnesses, who have knowledge of any aspect of this case, indicating those who may be used at the trial. Impeachment witnesses are not to be included.

Counsel for Aetna has in his possession papers initialed by Examiner which he requests be admitted in evidence at the trial but opposing

counsel will make no agreement with relation thereto.

Counsel for Aetna intends to offer at the trial the policy of insurance issued by Hartford to Lesmark, Inc. effective at the date of the loss which is the basis of these actions.

Counsel for other parties will object.

The Examiner has requested counsel to appear at trial with the maximum amount of authority to settle this case which will be allowed them by their principals.

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Pretrial Examiner

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John F. Mahoney, Jr. Atty for Aetna

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Frank J. Martell, Atty for Ogus

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Paul R. Connolly, Atty for Hartford

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[Filed Jan. 23, 1967]

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**  
(No. 3506-59)

This matter having come on to be heard before the Court, sitting without a jury, upon the traverses of the garnishors, Walter S. and Marie L. Charron, to the Answers to Interrogatories of the garnishees, Walter Ogus, Inc. (successors to Harris & Ogus, Inc.) and Hartford Accident and Indemnity Company, and the Court having taken testimony and received evidence on the issues set forth in the Pretrial Order, the Court, this 23 day of January, 1967 now makes the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

1. On November 21, 1962 judgments were entered in Civil Action Nos. 3464-59 and 3506-59 in the sum of \$21,400 in Civil Action No. 2364-59 on behalf of the plaintiff, Isabell C. Pryce against Walter S. Charron and Marie L. Charron and Lesmark, Inc., and in the sum of \$3,472.00 in Civil Action No. 3506-59 on behalf of the plaintiff, Robert Ash, against Walter S. Charron and Marie L. Charron and Lesmark, Inc., and on behalf of Walter S. Charron and Marie L. Charron against Lesmark, Inc., in the sum of \$2,000.00. In all instances, judgments were with interest from the date of entry thereof.

2. Thereafter, on May 24, 1963, the judgments on behalf of the plaintiffs, Isabell C. Pryce and Robert Ash, were paid and satisfied by the Aetna Casualty and Surety Company on behalf of their insureds, Walter S. and Marie L. Charron.

3. By virtue of the payment of the judgments against Walter S. and Marie L. Charron by Aetna Casualty and Surety Company, and by virtue of the terms of the policy of insurance in question, Aetna Casualty and Surety Company became subrogated to all rights of Walter S. and Marie L. Charron.

4. On May 8, 1964 a judgment for indemnification and exoneration was entered on behalf of Walter S. and Marie L. Charron against Lesmark, Inc. for the sums paid by Aetna Casualty and Surety Company on behalf of its insureds in satisfaction of the judgments entered jointly against Walter S. and Marie L. Charron and Lesmark, Inc.

5. In 1960, long prior to the trial of the issues pertaining to its liability toward Robert Ash and Isabell C. Pryce, Lesmark, Inc. had instituted third-party actions against Harris & Ogus, Inc. and Hartford Accident and Indemnity Company seeking, in substance, to recover damages for the asserted failure of said third-party defendants to provide property damage insurance to the extent of \$100,000.00.

6. On May 13, 1960 the Court ordered a severance of the claims

of Lesmark, Inc. against Harris & Ogus, Inc. and Hartford Accident and Indemnity Company from the actions of Pryce and Ash against Walter S. and Marie L. Charron and Lesmark, Inc. and then stayed these third party actions pending the disposition of principal claims.

7. On November 21, 1962 detailed Findings of Fact and Conclusions of Law were made in Civil Action Nos. 2354-59 and 3506-59 which resulted in the judgments aforesaid in favor of Isabell C. Pryce and Robert Ash against Walter S. and Marie L. Charron and Lesmark, Inc. These Findings of Fact, as the parties hereto agree, are conclusive and binding upon them, and the Court herewith adopts them and specifically refers herein to Findings 11 and 12 which, in substance, find that on July 28, 1959 Lesmark, Inc. "caused numerous pits or excavations to be dug by hand under both of the said party walls [of Isabell C. Pryce and Robert Ash]. These pits or excavations were made at points other than where the plans called for footings to be placed along the faces of the party walls and were directly under the two party walls. No support of any kind was provided by Lesmark, Inc. for the said party walls in connection with these excavations." The Court further found (Finding 12) that these excavations were in violation of the plans and specifications and the applicable Building Regulations of the District of Columbia and that Lesmark, Inc. was negligent in making them and that such negligence was the proximate cause of the damage sustained by the two plaintiffs.

8. Following the entry of the judgments of November 21, 1962 and May 8, 1964 in favor of Walter S. and Marie L. Charron against Lesmark, Inc., neither the Charrons nor their public liability insurer, Aetna Casualty and Surety Company, undertook any action to execute upon those judgments until September 17, 1965. There was no agreement or undertaking by Lesmark, Inc. that it would prosecute the third-party action for the benefit of either the Charrons or Aetna.

9. The Charrons were on notice through their counsel of the pendency of the third-party actions by Lesmark, Inc. against Harris &



Ogus, Inc. and Hartford Accident and Indemnity Company, and that the case was proceeding to hearing. Walter S. and Marie L. Charron made no attempt to intervene in said action until March 19, 1965 when a Motion to Intervene was filed by Walter S. and Marie L. Charron. This Motion to Intervene was denied on September 22, 1965. However, the third-party action of Lesmark, Inc. was stayed pending disposition of the present garnishment proceedings which were instituted by filing Writs of Attachments on September 17, 1965.

10. On March 4, 1965 an oral agreement to settle the third-party action against Harris & Ogus, Inc. was made between counsel for Harris & Ogus, Inc. and Lesmark, Inc. A release extinguishing all claims growing out of a claim for failure to provide proper insurance to Lesmark, Inc. by Harris & Ogus, Inc. was signed on March 8, 1965 on behalf of Lesmark, Inc., and on March 29, 1965 a praecipe dismissing Lesmark's claims against Harris & Ogus with prejudice was filed with the court.

11. On or about February 11, 1959, Michael Abrams, as president of Lesmark, Inc., requested insurance coverage from Harris & Ogus, Inc. to satisfy insurance specifications for a construction job he had undertaken for Potomac Electric Power Company and that \$100,000.00 of property damage insurance of general application be added to policy No. 42 MCS 601753. He was informed by Harris & Ogus, Inc. that this insurance coverage was issued by Hartford Accident and Indemnity Company as requested. Inadequate and confusing instructions to secure the change in insurance coverage were communicated by Harris & Ogus, Inc. to Hartford Accident and Indemnity Company, and, as a result, no property damage of general application was ever added by Endorsement to the Lesmark, Inc. policy No. 42 MCS 601753 by Hartford.

12. Harris & Ogus, Inc. told Michael Abrams, president of Lesmark, Inc., that property damage liability insurance of general application in the amount of \$100,000.00 covered Lesmark, Inc. under policy No. 42 MCS 601753.



13. At all times material hereto and for several years prior to 1959, Lesmark, Inc. or Michael Abrams possessed a copy of policy No. 42 MCS 601753 which had been issued to him by Hartford Accident and Indemnity Company through Harris & Ogus, Inc. That policy had never prior to February 11, 1959 provided for property damage coverage, but the language defining property damage coverage was present at all times within the four corners of the document. It was under this policy that Harris & Ogus, Inc. agreed to provide \$100,000.00 general property damage insurance by Endorsement thereon.

14. The insurance agreement as represented by policy No. 42 MCS 601753 contained an exclusion from property damage coverage for damage arising out of "the collapse of structural injury to any building or structure due (a) to excavation, including borrowing, filling or backfilling caisson work, or (b) to moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof; provided, however, part (1) or part (2) of this exclusion does not apply to operations stated, in the declarations or in the company's manual, as not subject to such part of this exclusion;".

15. Neither Michael Abrams nor anyone else on behalf of Lesmark Inc. had ever requested excavation coverage or the removal of the exclusion against damage resulting from excavation from the terms of policy No. 42 MCS 601753 prior to the loss sustained at 1919 I Street, N. W. Washington, D. C.

16. Harris & Ogus, Inc. did not know, nor did any officer, agent or employee of Harris & Ogus, Inc., that Michael Abrams or Lesmark, Inc. was engaged in making excavations, and specifically, they did not know that either Michael Abrams or Lesmark, Inc. contemplated doing excavation work upon the premises at 1919 Eye Street, N.W., Washington, D. C., owned by Walter S. and Marie L. Charron.

17. The liability which has been placed upon Lesmark, Inc. resulted from excavations which were undertaken on the property owned by Wal-

ter S. and Marie L. Charron and, consequently, is not covered by the terms of the insurance contract, policy No. 42 MCS 601753, by reason of Exclusion 1 of the policy.

18. The failure of Lesmark, Inc. or Michael Abrams to obtain insurance coverage against the hazards resulting from the performance of excavation work was not due to any negligence, breach of duty or breach of contract on the part of either Harris & Ogus, Inc. or Hartford Accident and Indemnity Company or any agent, servant or employee of either of them.

19. There was no fraud or secreting of assets practiced by Lesmark, Inc. upon Walter S. and Marie L. Charron or upon Aetna Casualty and Surety Company in connection with the release, and no claim of fraud is made against either of the garnishees.

#### CONCLUSIONS OF LAW

1. There was no legal duty imposed upon the insurance broker, Harris & Ogus, Inc., or any of its agents, servants or employees to provide Michael Abrams or Lesmark, Inc. with any specific or particular insurance coverage except to provide \$100,000.00 in general property damage insurance with Hartford Accident and Indemnity Company by Endorsement on policy No. 42 MCS 601753 (Aetna Exh. 2) and specifically no duty or obligation to provide him or his corporation with coverage against the hazards arising from engaging in excavation work.

2. Such general property damage liability coverage as was provided Lesmark, Inc. did not afford such coverage to Lesmark, Inc. as to have required Hartford Accident and Indemnity Company to defend Lesmark, Inc. against the claims of Pryce and Ash and the Charrons or to satisfy the judgments obtained against it.

3. Walter S. and Marie L. Charron and their subrogee, Aetna Casualty and Surety Company, as judgment creditors had no standing, right or interest which prevented Lesmark, Inc. from settling any claim which Lesmark, Inc. might have had against either Hartford Accident and In-

demnity Company or Harris & Ogus, Inc.

4. The release executed by Lesmark, Inc. in favor of Harris & Ogus, Inc. on March 8, 1964 is binding on Lesmark, Inc. and had the effect of extinguishing all claims of Lesmark, Inc. against Harris & Ogus, Inc. arising from any claimed failure of Harris & Ogus, Inc. to provide adequate or proper insurance coverage.

5. There is no independent ground of liability to Lesmark, Inc. which has been proven against Hartford Accident and Indemnity Company, and since Hartford Accident and Indemnity Company could be held liable to Lesmark, Inc. only upon the basis of a vicarious liability, the discharge of liability on the part of Harris & Ogus, Inc. effectuated by the release of Lesmark, Inc. effectively extinguished any liability of Hartford Accident and Indemnity Company to Lesmark, Inc.

6. The garnishees, Walter Ogus, Inc. (as successor to Harris & Ogus, Inc.) and Hartford Accident and Indemnity Company, are entitled to judgment against Walter S. and Marie L. Charron and their subrogee, Aetna Casualty and Surety Company, upon the traverses filed herein.

George L. Hart, Judge

[Certificate of Service, 16 Jan. 1967]

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[Filed Jan. 23, 1967]

**JUDGMENT**

(No. 3506-59)

This matter having come on to be heard before the Court, sitting without a jury, upon the traverses of the garnishors, Walter S. and Marie L. Charron, to the Answers to Interrogatories of the garnishees,

Walter Ogus, Inc. (successors to Harris & Ogus, Inc.) and Hartford Accident and Indemnity Company, and the Court having taken testimony and received evidence on the issues set forth in the Pretrial Order, and the Court having filed its Findings of Fact and Conclusions of Law herein, it is by the Court this 23rd day of January, 1967

ORDERED that judgment be entered in favor of the garnishees, Walter Ogus, Inc. (successors to Harris & Ogus, Inc.) and Hartford Accident and Indemnity Company and each of them upon the traverses of the garnishors, Walter S. and Marie L. Charron and their subrogee, Aetna Casualty and Surety Company, and that each defendant have the costs to which each is entitled by law.

George L. Hart, Judge

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[Filed Feb. 14, 1967]

**NOTICE OF APPEAL**

(No. 2364-59)

Notice is hereby given this 14th day of February, 1967, that Aetna Casualty and Surety Company, Garnishor hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 23rd day of January, 1967 in favor of Garnishees against said Aetna Casualty and Surety Company.

/s/ John Mahoney

Aetna Casualty and Surety Company  
Garnishor

[Certificate of Service]

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[Filed Feb. 14, 1967]

**NOTICE OF APPEAL**

(No. 3506-59)

Notice is hereby given this 14th day of February, 1967, that Aetna Casualty and Surety Company, Garnishor hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 23rd day of January, 1967 in favor of Garnishees against said Aetna Casualty and Surety Company.

/s/ John H. Mahoney

Aetna Casualty and Surety Company, Garnishor

[Certificate of Service]

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# MANUFACTURERS' AND CONTRACTORS' SCHEDULE LIABILITY POLICY

POLICY PROVISIONS—PART 1 Form No. 6097

Policy No. 42 MCS 601753

MICHAEL ABRAMS  
639 SLIGO AVE.,  
SILVER SPRING, MARYLAND

WASHINGTON OFFICE  
125 HARRIS & OGUS, INC.  
8-26-58 To 8-26-59

## HARTFORD ACCIDENT AND INDEMNITY COMPANY

Hartford, Connecticut

(A stock insurance company, herein called the company)

Agrees with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations and subject to the limits of liability, exclusions, conditions and other terms of this policy:

### INSURING AGREEMENTS

**Coverage A—Bodily Injury Liability:** To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person, caused by accident and arising out of the hazards hereinafter defined.

**Coverage B—Property Damage Liability:** To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the hazards hereinafter defined.

### Definition of Hazards

**Division 1—Premises—Operations:** The ownership, maintenance or use of premises, and all operations.

**Division 2—Elevators:** The ownership, maintenance or use of any elevator designated in the declarations.

**Division 3—Independent Contractors:** Operations performed for the named insured by independent contractors and general supervision thereof by the named insured, if the accident occurs in the course of such operations, other than (a) maintenance and repairs at premises owned by or rented to the named insured and (b) structural alterations at such premises which do not involve changing the size of or moving buildings or other structures.

**Division 4—Products—Completed Operations:**

(a) Goods or products manufactured, sold, handled or distributed by the named insured or by others trading under his name, if the accident occurs after possession of such goods or products has been relinquished to others by the named insured or by others trading under his name and if such accident occurs away from premises owned, rented or controlled by the named insured or on premises for which the classification stated in division 1 of Item 3 of the declarations excludes any part of the foregoing; provided, such goods or products shall be deemed to include any container thereof, other than a vehicle, but shall not include any vending machine or any property, other than such container, rented to or located for use of others but not sold;

(b) Operations, if the accident occurs after such operations have been completed or abandoned and occurs away from premises owned, rented or controlled by the named insured; provided, operations shall not be deemed incomplete because improperly or defectively performed or because further operations may be required pursuant to an agreement; provided further, the following shall not be deemed to be "operations" within the meaning of this paragraph: (1) the maintenance of vehicles, except from or onto a railroad car, (2) the maintenance of vehicles owned or used by or in behalf of the insured, (3) the existence of tools, equipment and abandoned or unused materials and (4) operations for which the classification stated in division 1 of Item 3 of the declarations excludes completed operations.

**Defenses—Supplementary Payments:** With respect to the liability of the insured under this policy for bodily injury liability and for property damage liability, the company shall:

(1) defend the insured against the insured alleging such injury, sickness, disease or destruction and seeking damages on account thereof, even if the suit is groundless, false or fraudulent; but the company shall not be bound to pay the cost of such investigation, negotiation and settlement of the suit as it seems expedient;

(2) pay premiums on bonds to release attachments for an amount in excess of the applicable limit of liability of this policy, all amounts on appeal and all costs in any such defended suit, without any obligation on the part of the insured to pay such bonds;

(2) pay all expenses incurred by the company, all costs taxed against the insured in any such suit and all interest accruing after entry of judgment until the company has paid or tendered or deposited in court such part of such judgment as does not exceed the limit of the company's liability thereon;

(3) pay expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of the accident;

(4) reimburse the insured for all reasonable expenses, other than loss of earnings, incurred at the company's request;

and the amounts so incurred, except settlements of claims and suits, are payable by the company in addition to the applicable limit of liability of this policy.

**BEST COPY AVAILABLE**

from the original bound volume



**III. Definition of Insured:** The unqualified word "insured" includes the named insured and also includes any executive officer, director or stockholder thereof while acting within the scope of his duties as such, and any organization or proprietor with respect to real estate management for the named insured. If the named insured is a partnership, the unqualified word "insured" also includes any partner therein but only with respect to his liability as such.

**IV. Insurance for Newly Acquired Elevators:** Such insurance as is or can be afforded under division 2 of the Definition of Hazards applies to elevators newly installed at the premises described in the declarations and to elevators at other premises of which the named insured acquires ownership or control.

This insuring agreement does not apply: (a) unless the named insured notifies the company within thirty days after the acquisition of each such elevator to which he wishes the insurance to apply; (b) to any loss against which the named insured has other valid and collectible insurance.

This insuring agreement applies only under the coverages for which this policy already affords insurance and then applies subject to the limits of liability stated in the declarations.

**V. Incidental Written Agreements:** Exclusion (b) does not apply to the following types of written agreements: (a) any easement agreement, except in connection with a railroad grade crossing, or (b) any agreement required by municipal ordinance, except in connection with work for the municipality. Exclusions (a) (1), (a) (4) and (i) do not apply to liability assumed under such agreements. If, with respect to this insuring agreement, more than one division of the Definition of Hazards applies, the limits of liability applicable to this insuring agreement shall be the highest limits of liability as stated in the declarations for any one of divisions 1, 2 and 3.

**VI. Policy Period, Territory:** This policy applies only to accidents which occur during the policy period within the United States of America, its territories or possessions, or Canada.

## EXCLUSIONS

This policy does not apply:

(a) under division 1 of the Definition of Hazards:

- (1) to the ownership, maintenance, operation, use, loading or unloading of,
  - (i) watercraft if the accident occurs away from premises owned by, rented to or controlled by the named insured, except insofar as this part of this exclusion is stated in the declarations to be inapplicable,
  - (ii) automobiles if the accident occurs away from such premises or the ways immediately adjoining, or
  - (iii) aircraft;

(2) to elevators;

(3) to the Independent Contractors Hazard; or

(4) to the Products—Completed Operations Hazard;

(b) under divisions 1, 2 and 3 of the Definition of Hazards, to liability assumed by the insured under any contract or agreement;

(c) under division 3 of the Definition of Hazards, to any act or omission of the named insured or any of his employees, other than general supervision of work performed for the named insured by independent contractors;

(d) under division 4 of the Definition of Hazards, to liability assumed by the insured under any contract or agreement except a warranty of goods or products;

(e) under Insuring Agreement V, to (1) a warranty of goods or products, or (2) any obligation for which the insured may be held liable in an action on a contract or an agreement by a person not a party thereto;

(f) to injury, sickness, disease, death or destruction due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing, with respect to (1) liability assumed by the insured under any contract or agreement or (2) expenses under Insuring Agreement II (b) (3);

(g) to liability imposed upon the insured, or any indemnitee, as a person or organization engaged in the business of manufacturing, selling or distributing alcoholic beverages, or as an owner or lessor of premises used for such purposes, by reason of any statute or ordinance pertaining to the sale, gift, distribution or use of any alcoholic beverage;

(h) under coverage A, to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(i) under coverage A, to bodily injury to or sickness, disease or death of any employee of the insured arising out of and in the course of his employment by the insured;

(j) under coverage B, to injury to or destruction of (1) property owned or occupied by or rented to the insured, or (2) except with respect to liability under sidetrack agreements covered by this policy, property used by the insured, or (3) except with respect to liability under such sidetrack agreements or the use of elevators, property in the care, custody or control of the insured or property as to which the insured for any purpose is exercising physical control, or (4) any goods, products or containers thereof manufactured, sold, handled or distributed or premises alienated by the named insured, or work completed by or for the named insured, out of which the accident arises;

(k) under coverage B, with respect to division 1 of the Definition of Hazards, to any of the following insofar as any of them occur on or from premises owned by or rented to the named insured and injure or destroy buildings or property therein and are not due to fire: (1) the discharge, leakage or overflow of water or steam from plumbing, heating, refrigerating or air-conditioning systems, standpipes for fire hose, or industrial or domestic appliances, or any substance from automatic sprinkler systems, (2) the collapse or fall of tanks or the component parts or supports thereof which form a part of automatic sprinkler systems, or (3) rain or snow admitted directly to the building interior through defective roofs, leaders or spouting, or open or defective doors, windows, skylights, transoms or ventilators;

➔ (l) under coverage B, with respect to division 1 of the Definition of Hazards, to injury to or destruction of any property arising out of (1) blasting or explosion, other than the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment, or (2) the collapse of or structural injury to any building or structure due (a) to excavation, including borrowing, filling or back-filling in connection therewith, or to tunneling, pile driving, coffer-dam work or caisson work, or (b) to moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof; provided, however, part (1) or part (2) of this exclusion does not apply to operations stated in the declarations or in the company's manual, as not subject to such part of this exclusion;

(m) under coverage B, with respect to division 1 of the Definition of Hazards, to injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property, or any apparatus in connection therewith, below the surface of the ground, if such injury or destruction is caused by and occurs during the use of mechanical equipment for the purpose of excavating or drilling, or to injury to or destruction of property at any time resulting therefrom; provided, however, this exclusion does not apply to operations stated in the declarations or in the company's manual, as not subject to this exclusion;



**PART 2** This Declarations page, with "POLICY PROVISIONS — PART I", Form No. 6097, and endorsements, if any, issued to form a part thereof, completes the below numbered MANUFACTURERS' AND CONTRACTORS' SCHEDULE LIABILITY POLICY.

**HARTFORD ACCIDENT AND INDEMNITY COMPANY**

Hartford, Connecticut

Policy No. **42 MCS 601753****DECLARATIONS**

Item 1. Name, Insured and Address

The named insured is:

(No., Street, Town, County, State)

☒ Individual

Previous Policy No.

**MCS 601215****MICHAEL ABRAMS****639 SLIGO AVE.,****SILVER SPRING**☐ Partnership

Code No. and General Agent or Branch

**WASHINGTON OFFICE**

Other

Code No. and Agent, Sub-Agent or Broker

**125****WARR. S. & CO., INC.**

Item 2. Policy Period: 12:01 A.M., standard time at the address of the insured as stated herein;

From

**5-1-60**To **5-31-61**

Item 3. The insurance afforded is only with respect to such and so many of the following coverages and divisions thereunder as are indicated by specific premium charge and limit of the company's liability against each such coverage and division shall be as stated herein, subject to all the terms of this policy having reference thereto.

Coverages	Limits of Liability
A — Bodily Injury Liability	50 thousand dollars each person 100 thousand dollars each accident thousand dollars aggregate (Aggregate applies to Division 4 only)
B — Property Damage Liability	thousand dollars each accident thousand dollars aggregate (Aggregate applies to Divisions 1, 3 and 4)



Divisions	Code No.	Premium Bases	Rates	Advance Premiums
Description of Hazards The descriptions of hazards and classifications stated below are subject to the exclusions, conditions and other terms of this policy.			Coverage A Bodily Injury Liability Coverage B Property Damage Liability	Coverage A Bodily Injury Liability Coverage B Property Damage Liability
Division 1. Premises—Operations  <b>SEE SCHEDULE ATTACHED</b>		(a) Area (Sq. Ft.) (b) Frontage (c) Remuneration	(a) Per 100 Sq. Ft. of Area (b) Per Linear Foot (c) Per \$100 of Remuneration	48.56
Division 2. Elevators		Number Insured	Per Elevator	
Division 3. Independent Contractors  <b>CONSTRUCTION OPERATIONS-CONTRACTOR-(NOT RAILROADS) EXCLUDING OPERATIONS ON BOARD SHIPS</b>	0514	Cost 204500.	Per \$100 of Cost .035	D/P 35.80
Division 4. Products—Completed Operations		Sales	Per \$1000 of Sales	

Form Numbers of Endorsements forming part of policy at issue

L-874 (QUARTERLY) L-2413 L-1560 L-2550 G-2100

Premiums	\$ 84.36	\$
Premium for Endorsements		
<b>Total Advance Premium</b>	<b>\$ 84.36</b>	

If Policy Period more than one year: Gross Premium \$

Discount \$

Net Premium \$

Premium is payable: On effective date of Policy \$

1st Anniversary \$

2nd Anniversary \$

4. Location of all premises owned, rented or controlled by named insured

**406-408-412 GIBBON ST., ALEXANDRIA, VIRGINIA  
AND DISTRICT OF COLUMBIA & MARYLAND**  
*Enter "same" if same location as address stated in Item 1*

Interest of named insured in such premises:

☐ Owner☒ Tenant☐ General Lessor

Part covered by \_\_\_\_\_

Business and \_\_\_\_\_

**ENGINEER-BUILDER**

Item 5. Within the past three years no insurer has canceled insurance, issued to the named insured, similar to that afforded hereunder, unless otherwise stated herein:

AVAILABLE

bound volume

## AUTOMOBILE AND LIABILITY

## NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(Broad Form)

It is agreed that this policy does not apply under any liability coverage:

- (a) to injury, sickness, disease, death or destruction with respect to which an insured under the policy is also an insured under a contract of nuclear energy liability insurance issued by the Nuclear Energy Liability Insurance Association or the Mutual Atomic Energy Liability Underwriters and in effect at the time of the occurrence resulting in such injury, sickness, disease, death or destruction; provided, such contract of nuclear energy liability insurance shall be deemed to be in effect at the time of such occurrence notwithstanding such contract has terminated upon exhaustion of its limit of liability;
- (b) to the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an insured, with respect to injury, sickness, disease, death or destruction resulting from the nuclear energy hazard; provided that except for byproduct material, this paragraph (b) shall not apply to goods or products manufactured or handled by a nuclear facility owned, maintained, operated or used by or on behalf of an insured while such goods or products are away from such facility after removal or distribution to others;
- (c) to the furnishing of services, materials, parts or equipment by an insured in connection with the planning, construction, maintenance, operation or use of any nuclear facility, (1) with respect to injury to or destruction of any nuclear facility or property thereat resulting from the nuclear energy hazard or (2) if the nuclear facility is located outside the United States of America, its territories or possessions, or Canada, with respect to injury, sickness, disease, death or destruction resulting from the nuclear energy hazard;
- (d) to the transportation, handling, use, sale, distribution or disposal of byproduct material, with respect to injury, sickness, disease, death or destruction resulting from the nuclear energy hazard.

As used in this endorsement:

1. The term "nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of source material, special nuclear material or byproduct material.
2. The terms "source material," "special nuclear material" and "byproduct material" shall have the meanings given them in the Atomic Energy Act of 1954 or by any law amendatory thereof; provided, except for byproduct material (a) contained in or combined with special nuclear material or (b) held, stored, transported or disposed of as waste by or on behalf of a nuclear facility, "byproduct material" shall not include any radioactive isotope away from a nuclear facility.
3. The term "nuclear facility" means:
  - (a) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
  - (b) any equipment or device (i) designed or used for the separation of the isotopes of uranium or plutonium, (ii) designed or used for the processing, fabricating or alloying of special nuclear material or of irradiated materials containing special nuclear material, (iii) incorporating or making use of such irradiated materials, or (iv) designed or used for processing waste byproduct material;
  - (c) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste source material or waste consisting of or containing special nuclear material or byproduct material; and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.

Subdivision (ii) of paragraph (b) foregoing is not applicable to the occasional mechanical processing or fabricating of special nuclear material by any person or organization at a location which contains no equipment, device or apparatus otherwise defined herein as a nuclear facility, where special nuclear or byproduct material is not regularly handled, stored, or disposed of as waste, and which is principally used for other operations not related to the handling, fabricating or use of special nuclear material.

4. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

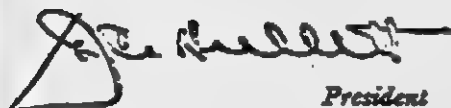
This endorsement forms a part of the policy, issued by the HARTFORD FIRE INSURANCE COMPANY GROUP company or companies designated therein, to which it is attached and takes effect as of the effective date of said policy.

Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.

## HARTFORD FIRE INSURANCE COMPANY GROUP

Hartford Fire Insurance Company  
Hartford Accident and Indemnity Company  
Citizens Insurance Company of New Jersey

New York Underwriters Insurance Company  
Northwestern Fire and Marine Insurance Company  
Twin City Fire Insurance Company

  
President

  
President

  
President

Hartford Fire Insurance Company  
New York Underwriters Insurance Company  
Citizens Insurance Company of New Jersey  
Twin City Fire Insurance Company

Hartford Accident and Indemnity Company

Northwestern Fire and Marine Insurance Company

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from the original

## LIABILITY

(For use on C, CL, LFX, LGX and MCS Policies)

## INDIVIDUAL AS NAMED INSURED

(Limited to Solely Owned Business)

(When attached to a policy that affords Automobile Insurance this endorsement does not apply to Automobile Liability)

Named Insured and Address

MICHAEL ABRAMS  
639 SLIGO AVE.,  
SILVER SPRING, MARYLAND

This endorsement forms a part of Policy No. 42 MCS 601753  
issued by the HARTFORD FIRE INSURANCE COMPANY GROUP com-  
pany or companies designated therein, and takes effect as of the effective date of  
this policy unless another effective date is stated herein.

Effective date..... 12:01 A. M., standard time at the address of the named  
insured as stated herein.

It is agreed that the policy does not apply except in connection with the conduct of a business of which the named insured is the sole owner.

"Business" includes trade, profession or occupation and the ownership, maintenance or use of farms, and of property rented in whole or in part to others, or held for such rental, by the insured other than (a) the insured's residence if rented occasionally or if a two-family dwelling usually occupied in part by the insured or (b) garages and stables incidental to such residence unless more than three car spaces or stalls are so rented or held.

Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.

This endorsement shall not be binding unless countersigned by a duly authorized agent of the company or companies; provided that if this endorsement takes effect as of the effective date of the policy and, at issue of said policy, forms a part thereof, countersignature on the declarations page of said policy by a duly authorized agent of the company or companies shall constitute valid countersignature of this endorsement.

## HARTFORD FIRE INSURANCE COMPANY GROUP

Hartford Fire Insurance Company  
Hartford Accident and Indemnity Company  
Citizens Insurance Company of New Jersey

New York Underwriters Insurance Company  
Northwestern Fire and Marine Insurance Company  
Twin City Fire Insurance Company

HARRIS &amp; OGUS, Inc.

Countersigned by.....

By.....

Form L-1540 5th Rev. Printed in U. S. A.

## LIABILITY

(For use with MCS Policy only)

## AMENDATORY ENDORSEMENT — INCIDENTAL WRITTEN AGREEMENTS

It is agreed that the first sentence of Insuring Agreement V, "Incidental Written Agreements" is amended to read:

Exclusion (b) does not apply to the following types of written agreements: (a) any easement agreement, except in connection with a railroad grade crossing, (b) any agreement required by municipal ordinance, except in connection with work for the municipality, (c) any elevator or escalator maintenance agreement or (d) any lease of premises agreement.

This endorsement shall take effect as of the effective date of the policy of which it forms a part. Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.

## HARTFORD ACCIDENT AND INDEMNITY COMPANY

Hartford, Connecticut

*M. J. P. [Signature]*  
Secretary

*William C. Jansen [Signature]*  
President

Form L-2540 Printed in U. S. A. 4-57

## LIABILITY

## EXTENSION SCHEDULE FOR OTS or MCS POLICIES

This schedule forms a part of Policy No. 42 MCS 601753, issued by the HARTFORD ACCIDENT AND INDEMNITY COMPANY,

of Hartford, Conn., in favor of MICHAEL AGRANS

Description of Hazards The descriptions of hazards and classifications stated below are subject to the exclusions, conditions and other terms of this policy.	Code No.	Premium Bases	Rates		Advance Premiums	
			Coverage A	Coverage B	Coverage A	Coverage B
CARPENTRY IN THE CONSTRUCTION OF DETACHED PRIVATE RESIDENCES FOR OCCUPANCY BY ONE OR TWO FAMILIES, AND PRIVATE GARAGES IN CONNECTION THEREWITH	5645	C) 1400 DC .392 C) IF ANYVA.131 C) 16,400 MD.174			D/P 44.93	
CLERICAL OFFICE EMPLOYEES-N.O.C.	3485	C) 4200. DC .006 4400. MD .007 IF ANYVA.006				
4321-23-25-27 HAYNES STREET, N.E. WASHINGTON, D.C. VACANT LAND-EXCLUDING REAL ESTATE DEVELOPMENT PROPERTY	239	B) 60 CC .044			M/P 3.63 48.56 INCL	
CARPENTRY N.O.C.	5457	8400. DC .595 103. MD .232 IF ANYVA .145				

BEST COPY

from the original

## LIABILITY

**ENDORSEMENT # 1**  
**INTERIM PREMIUM ADJUSTMENT ENDORSEMENT**

Named Insured and Address

This endorsement forms a part of Policy No. 1000 200755  
 and takes effect as of the effective date of said policy  
 unless another effective date is stated herein.

1000 200755  
38 11th Ave.  
SILVER SPRING, MARYLAND

Effective date 8-26-58

12:01 A. M., standard time at the address of the named insured as stated herein.

It is agreed that this policy is issued upon an interim premium adjustment basis and that such premiums as may be stated in the Declarations for which the premium basis is "admissions", "cost", "receipts", "remuneration", "sales" or "units" are deposit premiums only.

Immediately after the expiration of each period of QUARTERLY months from the inception date of the policy, the earned premium for such insurance as is afforded on such a premium basis shall be computed in accordance with the rates stated in the policy or in the manuals in use by the company and shall be paid immediately by the insured. Such deposit premium shall apply on the final payment of earned premium.

Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.

This endorsement shall not be binding unless countersigned by a duly authorized agent of the company; provided that if this endorsement takes effect as of the effective date of the policy, countersignature on the declarations page of said policy by a duly authorized agent of the company shall constitute valid countersignature of this endorsement.

**HARTFORD ACCIDENT AND INDEMNITY COMPANY**  
 Hartford, Connecticut

HARRIS &amp; OGUS, Inc.

Countersigned by

*[Signature]*  
 Authorized Agent



## Plaintiff's Exhibit 2, cont'd

## CONDITIONS

The conditions, except conditions 4 and 5, apply to all coverages. Conditions 4 and 5 apply only to the coverage noted thereunder.

1. **Premiums:** The premium bases and rates for the hazards described in the declarations are stated therein. Premium bases and rates for hazards not so described are those applicable in accordance with the manuals in use by the company.

The advance premium stated in the declarations is an estimated premium only. Upon termination of this policy, the earned premium shall be computed in accordance with the company's rules, rates, rating factors and minimum premiums applicable to this insurance. If the earned premium thus computed exceeds the estimated advance premium paid, the named insured shall pay the excess to the company; if less, the company shall return to the named insured the unearned portion paid by the insured.

When used as a premium basis:

(1) the word "cost" means the total cost to the named insured under division 3 of the Definition of Hazards, of all work let or sub-let in connection with each specific project, including the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the owner, contractor or subcontractor, including all fees, allowances, bonuses or commissions made, paid or due;

(2) the word "receipts" means the gross amount of money charged by the named insured for such operations by the named insured or by others during the policy period as are rated on a receipts basis other than receipts from telecasting, broadcasting or motion pictures, and includes taxes, other than taxes which the named insured collects as a separate item and remits directly to a governmental division;

(3) the word "remuneration" means (a) the entire remuneration earned during the policy period by all employees of the named insured, other than drivers of teams or automobiles and aircraft pilots and co-pilots, subject to any overtime earnings or limitation of remuneration rule applicable in accordance with the manuals in use by the company, and subject with respect to each executive officer to a maximum and a minimum of \$100 and \$30 per week, and (b) the remuneration of each proprietor at a fixed amount of \$3,600 per annum;

(4) the word "sales" means the gross amount of money charged by the named insured or by others trading under his name for all goods and products sold or distributed during the policy period and charged during the policy period for installation, servicing or repair, and includes taxes, other than taxes which the named insured and such others collect as a separate item and remit directly to a governmental division.

The named insured shall maintain for each hazard records of the information necessary for premium computation on the basis stated in the declarations, and shall send copies of such records to the company at the end of the policy period and at such times during the policy period as the company may direct.

2. **Inspection and Audit:** The company shall be permitted to inspect the insured premises, operations and elevators and to examine and audit the insured's books and records at any time during the policy period and any extension thereof and within three years after the final termination of this policy, as to how they relate to the premium bases or the subject matter of the insurance.

3. **Definitions:**

The word "elevator" means any hoisting or lowering mechanism between floors or landings at any building owned, rented or leased by the named insured, unless the named insured owns, operates or controls only a part of the building and does not operate, own or control the elevator, whether or not such device is in connection with the building, including any car, platform, shaft, hoistway, runway, power equipment and machinery. "Elevator" does not include a hoist without a platform outside a building or a hoist used in alteration, construction or demolition work, or an inclined conveyor used exclusively for carrying material, or a dumbwaiter used exclusively for carrying property and not for passenger transport not exceeding four feet.

The word "automobile" means a land motor vehicle, whether or not self-propelled, provided:

The following described equipment shall be deemed an automobile while towed by or carried on an automobile not so described, but not otherwise: if of the crawler-type, any tractor, power crane or shovel, ditch or trench digger; any farm-type

tractor; any concrete mixer other than of the mix-in-transit type; any grader, scraper, roller or farm implement; and, if not subject to motor vehicle registration, any other equipment not specified in (2) below, which is designed for use principally off public roads.

(2) The following described equipment shall be deemed an automobile while towed by or carried on an automobile as above defined solely for purposes of transportation or while being operated solely for locomotion, but not otherwise: if of the non-crawler type, any power crane or shovel, ditch or trench digger; and any air-compressing, building or vacuum cleaning, spraying or welding equipment or well drilling machinery.

(c) **Assault and Battery.** Assault and battery shall be deemed an accident unless committed by or at the direction of the insured.

4. **Limits of Liability—Coverage A:** The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by one person as the result of any one accident; the limit of such liability stated in the declarations as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by two or more persons as the result of any one accident.

5. **Limit of Liability—Coverage B:** The limit of property damage liability stated in the declarations as applicable to "each accident" is the total limit of the company's liability for all damages arising out of injury to or destruction of all property of one or more persons or organizations, including the loss of use thereof, as the result of any one accident.

6. **Limits of Liability:** Subject to the limit of liability with respect to "each accident", the limit of liability, if any, stated in the declarations as "aggregate" is the total limit of the company's liability for the division of hazards, and under the coverage, for which said limit is stated; provided, under division 1 of the Definition of Hazards, said limit applies only to premises and operations rated on a remuneration premium basis and contractors' equipment rated on a receipts premium basis. Under divisions 1 and 3 of the Definition of Hazards said limit applies separately to each project with respect to operations being performed away from premises owned by or rented to the named insured.

Under division 4 of the Definition of Hazards all damages arising out of one lot of goods or products prepared or acquired by the named insured or by another trading under his name shall be considered as arising out of one accident.

The insurance afforded by this policy under division 2 of the Definition of Hazards applies separately to each elevator.

7. **Severability of Interests:** The term "the insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

8. **Notice of Accident:** When an accident occurs written notice shall be given by or on behalf of the insured to the company or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the accident, the names and addresses of the injured and of available witnesses.

9. **Notice of Claim or Suit:** If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

10. **Assistance and Cooperation of the Insured:** The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

11. **Action Against Company:** No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

15. **Assignment:** Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the named insured shall die, this policy shall cover the named insured's legal representative as named insured; provided that notice of cancellation addressed to the insured named in the declarations and mailed to the address shown in this policy shall be sufficient notice to effect cancellation of this policy.

16. **Bankruptcy or Insolvency:** The insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

17. **Other Insurance:** If the insured has other insurance against a loss covered by this policy the company shall not be liable under this policy for more than its proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

18. **Subrogation:** In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

19. **Three Year Policy:** A policy period of three years is comprised of three consecutive annual periods. Computation and adjustment of earned premium shall be made at the end of each annual period. Aggregate limits of liability as stated in this policy shall apply separately to each annual period.

20. **Changes:** Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy, signed by an authorized representative of the company.

16. **Assignment:** Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the named insured shall die, this policy shall cover the named insured's legal representative as named insured; provided that notice of cancellation addressed to the insured named in the declarations and mailed to the address shown in this policy shall be sufficient notice to effect cancellation of this policy.

17. **Cancellation:** This policy may be canceled by the named insured by surrender thereof to the company or any of its authorized agents or by mailing to the company written notice stating when thereafter the cancellation shall be effective. This policy may be canceled by the company by mailing to the named insured at the address shown in this policy written notice stating when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing.

If the named insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

18. **Declarations:** By acceptance of this policy the named insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

In Witness Whereof, the HARTFORD ACCIDENT AND INDEMNITY COMPANY has caused this policy to be signed by its President and a Secretary but the same shall not be binding unless countersigned on the declarations page by a duly authorized agent of the company.

*W. E. J. [Signature]*  
Secretary

*Wilson C. Jansen*  
President



## DAILY REPORT for use with MANUFACTURERS' AND CONTRACTORS' SCHEDULE LIABILITY POLICY Form 60'

DECLARATIONS Page Form 1

Indexed	Rating Checked	Entry to Accts. Dept.	Basis of Rating
Noted by Eng. Dept.	Registered	Approved	
Experience Group	Cond. Rep's Ordered		

Hartford Accident and Indemnity Company

Notes to Underwriter:

JUL 24 1953 POSTED

Policy No. 42 MCS 601753

## DECLARATIONS Item 1

Policy No.

The named insured is:

- ☒ Individual  
☐ Corporation  
☐ Partnership

Previous Policy No.

Pol. Code 082

Code, Gen. Agt., Br.

Code No. and Agent, Sub-Agent or Broker

WILSON, H. L. BRANS  
 1200 31 33 AVE.  
 SILVER SPRING, MARYLAND

Insured  
and  
Address

WASHINGTON OFFICE

Other

Item 2. Policy Period: 12:01 A.M., standard time at the  
 address of the insured as stated herein:

From

8-28-53

To 8-28-53

Item 3.		Term	Entry Year	Count	State	R-N	Inst.	Aud.Term		Type							
Divisions	Coverages	Premiums	Limits		Comm.	Line	City	Limits	KE	Exposur.	Class						
1. Premises-Operations		44.93	Coverage A			0 420	00	5	1	0.	v000						
	A-Bodily Injury	\$ 3.63	\$ 50	,000 person								0 410	49	5	1	60	239
	B-Property Damage	\$	\$ 100	,000 accident													
2. Elevators	A-Bodily Injury	\$	\$ ,000 aggregate			0430	00	5	1	204500.	0514						
	B-Property Damage	\$	(Agg. app. Div. 4 only)														
3. Independent Contractors	A-Bodily Injury	\$ 35.80	Coverage B														
	B-Property Damage	\$	\$ ,000 accident														
4. Products-Comp. Oper.	A-Bodily Injury	\$	\$ ,000 aggregate														
	B-Property Damage	\$	(Agg. app. Divs. 1, 3 & 4)														
Premium for Endorsements		\$															
Total Advance Premium		\$ 84.36	Total B. I. \$		84.36		Total P. D. \$										

Divisions		Code No.	Premium Bases	Rates		Advance Premiums	
Description of Hazards				Cov. A	Cov. B	Cov. A	Cov. B
Division 1. Premises-Operations			(a) Area (Sq. Ft.) (b) Frontage (c) Remuneration	(a) Per 100 Sq. Ft. of Area (b) Per Linear Foot (c) Per \$100 of Remuneration		45.36	
SEE SCHEDULE ATTACHED							
Division 2. Elevators			Number Insured	Per Elevator			
Division 3. Independent Contractors			Cost	Per \$100 of Cost			
CONSTRUCTION OPERATIONS-CONTRACTORS- (NOT AIRCRAFT) EXCLUDING OPERATIONS ON BOARD SHIPS		0514	204500.	.075		85.30	
Division 4. Products-Completed Operations			Sales	Per \$1000 of Sales			
Form Numbers of Endorsements		part of policy at issue		Premiums	\$ 84.36	\$	
L-2550 (QUARTERLY) L-2551 L-2552 L-2553 L-2554				Premium for Endorsements	\$	\$	
				Total Advance Premium	\$ 84.36	\$	

If Policy Period more than one year: Gross Premium \$

Discount \$

Net Premium \$

Premium is payable: On effective date of Policy \$

1st Anniversary \$

2nd Anniversary \$

Item 4. Location of all premises owned, rented or controlled  
 by named insured

406-408-412 GLENN ST., ALEXANDRIA, VIRGINIA  
 AND DISTRICT OF COLUMBIA, MARYLAND  
 Enter "same" if same location as address stated in Item 1

Interest of named insured in such premises:

☐ Owner  
☐ General Lessee

☐ Tenant

Part occupied by named insured

Business of the named insured is

ENGINEER-BUILDER

Item 5. During the past three years no insurer has canceled insurance, issued to the named insured, similar to that afforded hereunder, unless otherwise stated here

## LIABILITY

## EXTENSION SCHEDULE FOR OTS or MCS POLICIES

This schedule forms a part of Policy No. 42 MCS 601753, issued by the HARTFORD ACCIDENT AND INDEMNITY COMPANY, of Hartford, Conn., in favor of **MICHAEL ABRAMS**

Description of Hazards The descriptions of hazards and classifications stated below are subject to the exclusions, conditions and other terms of this policy.	Code No.	Premium Bases	Rates		Advance Premiums	
			Coverage A	Coverage B	Coverage A	Coverage B
CARPENTRY IN THE CONSTRUCTION OF DETACHED PRIVATE RESIDENCES FOR OCCUPANCY BY ONE OR TWO FAMILIES, AND PRIVATE GARAGES IN CONNECTION THEREWITH	3645	C) 1400 DC .392 C) IF ANYVA.151 C) 16,400 MD.174		5.49 28.50	D/P 44.93	
CLERICAL OFFICE EMPLOYEES-N.O.C.	3485	C) 4200. DC .006 4400. MD .007 IF ANYVA.006		25 31		
4321-23-25-27 HAYNES STREET, N.E. WASHINGTON, D.C. VACANT LAND-EXCLUDING REAL ESTATE DEVELOPMENT PROPERTY	239	B) 60 DC .044		2.64	M/P 3.75 48.56 INCL	
CARPENTRY N.O.C.	3457	8400. DC .595 103. MD .252 IF ANYVA .145		49.58 .24		



LIABILITY

## INTERIM PREMIUM ADJUSTMENT ENDORSEMENT

Named Insured and Address

MICHAEL A. WINS  
68 ELIOT AVE.,  
SILVER SPRING, MARYLAND

This endorsement forms a part of Policy No. 12-10-55 and takes effect as of the effective date of said policy unless another effective date is stated herein.

Effective date 12-10-55

12:01 A. M., standard time at the address of the named insured as stated herein.

It is agreed that this policy is issued upon an interim premium adjustment basis and that such premiums as may be stated in the Declarations for which the premium basis is "admissions", "cost", "receipts", "remuneration", "sales" or "units" are deposit premiums only.

Immediately after the expiration of each period of **QUARTERLY** months from the inception date of the policy, the earned premium for such insurance as is afforded on such a premium basis shall be computed **QUARTERLY** with the rates stated in the policy or in the manuals in use by the company and shall be paid immediately by the insured. Such deposit premium shall apply on the final payment of earned premium.

Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.

This endorsement shall not be binding unless countersigned by a duly authorized agent of the company; provided that if this endorsement takes effect as of the effective date of the policy, countersignature on the declarations page of said policy by a duly authorized agent of the company shall constitute valid countersignature of this endorsement.

HARTFORD ACCIDENT AND INDEMNITY COMPANY  
Hartford, Connecticut

Countersigned by.....  
Authorized Agent

## LIABILITY

## ENDORSEMENT # 2

## AMENDMENT OF DECLARATIONS

Named Insured and Address

This endorsement forms a part of Policy No. 42 HCS 601753 issued by the HARTFORD FIRE INSURANCE COMPANY GROUP company or companies designated therein, and takes effect as of the effective date of said policy unless another effective date is stated herein.

MICHAEL ADAMS  
630 SLICO AVENUE,  
SILVER SPRING, MARYLAND

Effective date 2-11-59

12:01 A. M., standard time at the address of the named insured as stated herein.

It is agreed that the policy is amended with respect to such of the following particulars as are indicated by specific entry in connection therewith:

1. Item 1, Named Insured to read:

LESHAK, INC.

2. Item 1, Address of Named Insured to read:

3. Item 1, Legal status of Named Insured to read: ☐ Individual ☐ Corporation ☐ Partnership

4. Item 2, Policy Period to read: From

to

POLICY PERIOD: 8-26-58 TO: 8-26-59

Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated. This endorsement shall not be binding unless countersigned by a duly authorized agent of the company or companies.

## HARTFORD FIRE INSURANCE COMPANY GROUP

Hartford Fire Insurance Company  
Hartford Accident and Indemnity Company  
Citizens Insurance Company of New Jersey

New York Underwriters Insurance Company  
Northwestern Fire and Marine Insurance Company  
Twin City Fire Insurance Company

42 WASHINGTON BRANCH OFFICE  
62013 HARRIS & COUS, INC.  
7-17-58  
Form L-2520 Rev. Printed in U. S. A.

Countersigned by.....  
Authorized Agent

LIABILITY

ENDORSEMENT 3

## INCREASED LIMITS OF LIABILITY FOR SPECIFIC OPERATIONS

FROM \$25,000 TO \$150,000 AND \$13,500 P.O.D.

Named Insured and Address

This endorsement forms a part of Policy No. 1215  
and takes effect as of the effective date of said policy  
unless another effective date is stated herein.

Effective date

12:01 A. M., standard time at the address of the named  
insured as stated herein.

It is agreed that with respect to such insurance as is afforded by the policy, the limit of the company's liability shall be increased to read as stated herein but only as respects the insured's operations at 1215  
Such increased limits are in lieu of the Limits of Liability stated in the policy and not in addition thereto.

## Coverages

A — Bodily Injury Liability

B — Property Damage Liability

## Limits of Liability

100 thousand dollars each person  
100 thousand dollars each accident  
100 thousand dollars aggregate

100 thousand dollars each accident  
100 thousand dollars aggregate

Premium for the insurance afforded by this endorsement shall be computed on the basis of the following rates.

Description of Hazards The descriptions of hazards and classifications stated below are subject to the exclusions, conditions and other terms of this policy.	Code No.	Premium Basis	Rates		Premium	
			Coverage A	Coverage B	Coverage A	Coverage B
	70		.100	.100	70	70
	02		.007	.020	02	15.
INCLUDE DIVISION 2 PRODUCTS OF LINE CONTRACTOR-REPAIRING CONSTRUCTION (NOT REPAIRING) CONTRACTS-H.C.C.	1215	227.	.231	.170	15.21	11.30
INCLUDE CONTRACTORS (CON TRACTS 1-2520)						5.00
INCREASED LIMITS FLAT CHARGE						
Policy Period: 3-26-51 to 3-26-52						

Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.

This endorsement shall not be binding unless countersigned by a duly authorized agent of the company: provided that if this endorsement takes effect as of the effective date of the policy, countersignature on the declarations page of said policy by a duly authorized agent of the company shall constitute valid countersignature of this endorsement.

HARTFORD ACCIDENT AND INDEMNITY COMPANY

Hartford, Connecticut

1215 BRANCH OFFICE  
1215 BRANCH OFFICE  
1215 BRANCH OFFICE

Countersigned by

Authorized Agent

BEST CO

from the or

LIABILITY

ENDORSEMENT # 1

## CONTRACTUAL LIABILITY COVERAGE ENDORSEMENT

ADDITIONAL PREMIUM: \$32.75 (\$9.25 S.I. &amp; 13.50 P.D.)

Named Insured and Address

This endorsement forms a part of Policy No. 12 HCS 601753 issued by the HARTFORD FIRE INSURANCE COMPANY GROUP company or companies designated therein, and takes effect as of the effective date of said policy unless another effective date is stated herein.

LESMARK, INC.  
650 SLIGO AVENUE,  
SILVER SPRING, MARYLAND

Effective date

2-11-59

12:01 A. M., standard time at the address of the named insured as stated herein.

Schedule. The insurance afforded under this endorsement is only with respect to such and so many of the following coverages as are indicated by specific limits of liability.

Coverages	Limits of Liability			
Y — Contractual Bodily Injury Liability	100 thousand dollars each person	300 thousand dollars each accident		
Z — Contractual Property Damage Liability	100 thousand dollars each accident	200 thousand dollars aggregate		
Designation of Contracts	Premium Bases		Advance Premiums	
		Rates		
		Cov. Y	Cov. Z	
BETWEEN LESMARK INC. & POTOMAC ELECTRIC POWER COMPANY BROAD FORM CONTRACTS	(a) No. Insured (b) Cost TO BE DET.	(a) Per Contract (b) Per \$100 of Cost .148 .061	11.25 19.25	11.25 13.50
CODE 0555				
POLICY PERIOD: 2-06-59 TO 8-06-59	Total Advance Premium for this Endorsement		\$10.25	\$13.50

The company agrees with the named insured, in consideration of the payment of the premium and in reliance upon the statements in the declarations and in the schedule herein and subject to the limits of liability, exclusions, conditions and other terms of this endorsement:

## INSURING AGREEMENTS

## I. Coverage Y — Contractual Bodily Injury Liability

To pay on behalf of the insured all sums which the insured, by reason of the liability assumed by him under any written contract designated in the schedule herein, shall become legally obligated to pay as damages because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person and caused by accident.

## Coverage Z — Contractual Property Damage Liability

To pay on behalf of the insured all sums which the insured, by reason of the liability assumed by him under any written contract designated in the schedule herein, shall become legally obligated to pay as damages because of injury to or destruction of property, including the loss of use thereof, caused by accident.

II. Defense, Settlement, Supplementary Payments. The provisions of Insuring Agreement II of the policy, other than paragraph (b) (3) thereof, are applicable to the insurance afforded under this endorsement. With respect to such injury, sickness, disease or destruction as is covered by the terms of this endorsement, the company also shall defend an arbitration proceeding wherein an indemnitee under a written contract designated in the schedule below seeks damages against the insured on account thereof, and wherein the company is entitled to exercise the insured's rights in the choice of arbitrators and in the conduct of such arbitration proceedings.

III. Definition of Insured. The provisions of Insuring Agreement III of the policy are applicable to the insurance afforded under this endorsement.

IV. Endorsement Period, Territory. This endorsement applies only to accidents which occur on and after the effective date hereof, during the policy period and within the United States of America, its territories or possessions, or Canada.

Form L-2359 2nd Rev. Printed in U. S. A. 7-57

(Over)  
32 WASHINGTON BRANCH OFFICE  
620134 HARRIS & C. CO. INC.

7-17-58

COPY AVAILABLE

Original bound volume



## EXCLUSIONS

This endorsement does not apply:

- (a) to liability for any warranty of goods or products;
- (b) to damages awarded in arbitration other than an arbitration proceeding as described in Insuring Agreement II of this endorsement but this exclusion shall not apply as respects a work of maintenance, agreement required by municipal ordinance, sidetrack agreement or elevator or escalator maintenance agreement;
- (c) to any obligation for which the insured may be held liable in an action on a contract by a person not a party thereto;
- (d) if the insured or indemnitee is architect, engineer or subcontractor to injury, sickness, disease, death or destruction arising out of defects in maps, plans, designs or specifications prepared, written or used by the insured or indemnitee;
- (e) to injury, sickness, disease, death or destruction due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;
- (f) to liability imposed upon any indemnitee, as a person or organization engaged in the business of manufacturing, selling or distributing alcoholic beverages, or as an owner or lessor of premises used for such purposes, by reason of any statute or ordinance pertaining to the sale, gift, distribution or use of any alcoholic beverage;
- (g) under coverage Y, to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;
- (h) under coverage Z, to injury to or destruction of (1) property owned or occupied by or rented to the insured, or (2) except with respect to liability under sidetrack agreements covered by this endorsement, property used by or in the care, custody or control of the insured or property as to which the insured for any purpose is exercising physical control;
- (i) under coverage Z, to injury to or destruction of any goods, products or containers thereof manufactured, sold, handled or distributed or premises alienated by the named insured, or work completed by or for the named insured, out of which the accident arises;
- (j) under coverage Z, to any of the following insofar as any of them occur on or from premises owned by or rented to the named insured and injure or destroy buildings or property therein and are not due to fire: (1) the discharge, leakage or overflow of water or steam from plumbing, heating, refrigerating or air conditioning systems, standpipes for fire hose, or industrial or domestic appliances, or any substance from automatic sprinkler systems, (2) the collapse or fall of tanks or the component parts or supports thereof which form a part of automatic sprinkler systems, or (3) rain or snow admitted directly to the building interior through defective roofs, leaders or gutters, or open or defective doors, windows, skylights, transoms or ventilators.

## CONDITIONS

1. **Policy Conditions.** All of the Conditions of the policy which would apply to the bodily injury liability or property damage liability coverages thereof shall apply to the insurance under this endorsement except those respecting "Premium", "Definitions", "Limits of Liability" and "Assistance and Cooperation of the Insured".
2. **Limits of Liability**
  - (a) **Coverage Y.** The limit of contractual bodily injury liability stated in the schedule herein as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by one person as the result of any one accident; the limit of such liability stated in the schedule herein as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by two or more persons as the result of any one accident.
  - (b) **Coverage Z.** The limit of contractual property damage liability stated in the schedule herein as applicable to "each accident" is the total limit of the company's liability for all damages arising out of injury to or destruction of all property of one or more persons or organizations, including the loss of use thereof, as the result of any one accident; the limit of such liability stated in the schedule herein as "aggregate" is, subject to the above provision respecting "each accident", the total limit of the company's liability for all damages. Said aggregate limit applies separately to each project with respect to operations being performed away from premises owned by or rented to the named insured.
  - (c) The inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.
3. **Assistance and Cooperation of the Insured.** The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits and arbitration proceedings covered hereunder. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense.
4. **Premium.** The premium bases and rates for the contracts described in the schedule herein are stated therein.
 

The premium with respect to which "cost" is the basis, is an estimated premium only. Upon termination of this endorsement, the earned premium shall be computed in accordance with the company's rules, rates, rating plans, premiums and minimum premiums applicable to this insurance. If the earned premium thus computed exceeds the estimate advance premium paid, the named insured shall pay the excess to the company; if less, the company shall return to the named insured the unearned portion paid by such insured.

When used as a premium basis the word "cost" means the total cost to any indemnitee of all work let or sublet in connection with each specific project, including the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the owner, contractor or subcontractor, including all fees, allowances, bonuses or commissions made, paid or due.

Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.

This endorsement shall not be binding unless countersigned by a duly authorized agent of the company or companies; provided that if this endorsement takes effect as of the effective date of the policy and, at issue of said policy, forms a part thereof, countersignature on the declarations page of said policy by a duly authorized agent of the company or companies shall constitute valid countersignature of this endorsement.

## HARTFORD FIRE INSURANCE COMPANY GROUP

Hartford Fire Insurance Company  
Hartford Accident and Indemnity Company  
Citizens Insurance Company of New Jersey

New York Underwriters Insurance Company  
Northwestern Fire and Marine Insurance Company  
Twin City Fire Insurance Company

Countersigned by \_\_\_\_\_  
Authorized Agent



LIABILITY

ENDORSEMENT 35

## AMENDMENT OF DECLARATIONS

Named Insured and Address

This endorsement forms a part of Policy No. 12-26-59  
 issued by the HARTFORD FIRE INSURANCE COMPANY GROUP com-  
 pany or companies designated therein, and takes effect as of the effective date of  
 said policy unless another effective date is stated herein.

4500 WINDY HILL  
 8000 OLIVE AVENUE,  
 SILVER SPRING, MARYLAND

Effective date.....

12:01 A. M., standard time at the address of the named insured  
 as stated herein.

It is agreed that the policy is amended with respect to such of the following particulars as are indicated by specific entry in connection therewith:

1. Item 1. Named Insured to read:

4500 WINDY HILL, SILVER SPRING, MARYLAND, as respects jobs for Dixie Janitor Supply  
 Warehouse at Rockville Volunteer Fire Department, Inc.

2. Item 1. Address of Named Insured to read:

3. Item 1. Legal status of Named Insured to read: ☐ Individual ☐ Corporation ☐ Partnership

4. Item 2. Policy Period to read: From

to

POLICY PERIOD: 8-26-59 TO 8-26-60

Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.  
 This endorsement shall not be binding unless countersigned by a duly authorized agent of the company or companies.

## HARTFORD FIRE INSURANCE COMPANY GROUP

Hartford Fire Insurance Company  
 Hartford Accident and Indemnity Company  
 Citizens Insurance Company of New Jersey

New York Underwriters Insurance Company  
 Northwestern Fire and Marine Insurance Company  
 Twin City Fire Insurance Company

LOCAL MOTOR BRANCH OFFICE  
 4500 WINDY HILL, SILVER SPRING, MARYLAND

Countersigned by.....

Authorized Agent

Form L-2520 Rev. Printed in U. S. A.

7-17-59 PA

## ENDORSEMENT C

Named Insured and Address

This endorsement is for as a part of Policy No. 1234567890  
 issued by the HARTFORD FIRE INSURANCE COMPANY GROUP com-  
 pany or company designated therein, and takes effect as of the effective date of  
 said policy unless another effective date is stated herein.

LESTER K. HODGINS, JR. AND ARLAN AS  
 ONE OLIVE AVE.,  
 SILVER SPRING, MARYLAND

Effective date: 1-1-59 12:01 A. M., standard time at the address of the named insured  
 as stated herein.

Additional Premium: \$10.00 Return Premium: \$10.00

B. I. \$ P. D. \$ M. P. \$ Coll. \$  
 Comp. \$ Fire \$ Theft \$ Other \$

In consideration of the premium charged it is hereby understood and agreed  
 that (Item # 3) (Endorsement # ) of the policy  
 to which this endorsement is attached is amended to READ AS FOLLOWS.  
 (Read as follows) (Include) (Exclude).

## LIMITS OF LIABILITY

## COVERAGE A

BODILY INJURY  
 \$100,000 PERSON  
 \$500,000 ACCIDENT

CODE	RATE
5845	DC .110 VA .159 MO .155
8405	DC .000 MO .008 VA .000
259	DC .046
8437	DC .061 MO .210 VA .154
0514	.057

Policy Period 9-20-58 TO 9-20-59

No. herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.  
 This endorsement shall not be binding unless countersigned by a duly authorized agent of the company or companies.

BRANCH OFFICE

HARTFORD FIRE INSURANCE COMPANY GROUP

Hartford Fire Insurance Company  
 Hartford Accident and Indemnity Company  
 Citizens Insurance Company of New Jersey

New York Underwriters Insurance Company  
 Twin City Fire Insurance Company

Countersigned by \_\_\_\_\_ Authorized Agent

BEST COPY  
 from the original

## PLAINTIFF'S EXHIBIT 2e

JA 125  
ENDORSEMENT # 7

Named Insured and Address

This endorsement forms a part of Policy No. 32-100-801703 issued by the HARTFORD FIRE INSURANCE COMPANY GROUP company or companies designated therein, and takes effect as of the effective date of said policy unless another effective date is stated herein.

LESMARK, INC., & MICHAEL ABRAYS  
339 SLIGO AVE.,  
SILVER SPRING, MARYLAND

Effective date.....

7-20-59

12:01 A. M., standard time at the address of the named insured as stated herein.

Additional Premium: \$ RE DET. Return Premium: \$ RE DET.

B. I. \$ \_\_\_\_\_ P. D. \$ \_\_\_\_\_ M. P. \$ \_\_\_\_\_ Coll. \$ \_\_\_\_\_  
Comp. \$ \_\_\_\_\_ Fire \$ \_\_\_\_\_ Theft \$ \_\_\_\_\_ Other \$ \_\_\_\_\_

In consideration of the premium charged it is hereby understood and agreed

that ITEM # 3 of the policy  
(Item # \_\_\_\_\_) (Endorsement # \_\_\_\_\_)  
to which this endorsement is attached is amended to INCLUDE  
(Read as follows) (Include) (Exclude).

## LIMITS OF LIABILITY

COVERAGE B PROPERTY DAMAGE  
\$25,000 ACCIDENT  
\$50,000 AGGREGATE

CODE	RATE	CODE	RATE
5645	DC .182	3457	DC .180
	VA .132		MD .168
	MD .132		VA .180
3435	DC .004	0514	
	MD .004		.018
	VA .004		
259	DC .005		

*This issued  
by Hartford  
day after  
accident*

POLICY PERIOD 8-20-58 TO 8-26-59

Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated. This endorsement shall not be binding unless countersigned by a duly authorized agent of the company or companies.

42 WASHINGTON BRANCH OFFICE

320134 HARTFORD FIRE INSURANCE COMPANY GROUP

Hartford Fire Insurance Company  
Hartford Accident and Indemnity Company  
Citizens Insurance Company of New Jersey

New York Underwriters Insurance Company  
Twin City Fire Insurance Company

8-6-59/HE

Countersigned by.....

Authorized Agent

March 5, 1965

REGISTERED MAIL  
RETURN RECEIPT REQUESTED

Samuel Barker, Esquire  
1001 Connecticut Avenue  
Washington, D. C. 20036  
and

Frank J. Martell, Esquire  
1215 19th Street, N. W.  
Washington, D. C. 20006

Re: Fenton and Ash v. Walter S. and Marie L.  
Charron and Lesmark, Inc. v. Harris &  
Ogus and Hartford Accident & Indemnity  
Company

Gentlemen:

Upon my request, Chief Judge McGuire today continued the trial of the third-party action in the above case for 30 days in order to afford me an opportunity to take appropriate action to protect the interests of Walter S. and Marie L. Charron in aid of the satisfaction of their judgment.

You have both advised me on March 4 of a proposed agreement to settle the claim of Lesmark, Inc. against Harris & Ogus for a consideration of \$1,500. I was advised by Mr. Martell for the first time on March 3 of the pendency of these negotiations. The proposed settlement is in derogation of the right of Mr. and Mrs. Charron to enforce their claim for full and complete indemnification from Lesmark, Inc., for which judgments were entered in their favor in the main action. The sole purpose of the contract of insurance in issue in the third-party action was to provide the means for such indemnification and the relief sought in the third-party complaint was for this express purpose. Accordingly, Mr. and Mrs. Charron have a direct interest in the recovery under the third-party complaint. The proposed settlement of the claim against Harris & Ogus for a sum, which I understand was to be applied solely as an attorney's fee to Mr. Barker for services rendered to date, clearly frustrates the vested rights of the Charrons as third-party beneficiaries in this action. From a cursory examination of the facts, it would appear that the claims asserted against Harris & Ogus and Hartford are meritorious.

Accordingly, in order to carry out the purposes of the continuance of this trial, I specifically request that the status quo of this law suit be maintained and that this proposed settlement not be consummated. After I have had a further opportunity to look into this entire matter, I shall be in touch with you again before the expiration of the 30-day period of continuance, or on or before March 26.

Very truly yours,

/s/ Justin L. Edgerton

JLE:vtp

**INSTRUCTIONS TO DELIVERY EMPLOYEE**

☐ Deliver ONLY to addressee ☐ Show address where delivered  
(Additional charges required for these services)

Insured the contents as described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

*Samuel Barker*

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

*F. Carlin*

DATE DELIVERED *3/2/65* SHOW WHERE DELIVERED (only if requested)

CS-1-71548-5-7 GPO

**INSTRUCTIONS TO DELIVERY EMPLOYEE**

☐ Deliver ONLY to addressee ☐ Show address where delivered  
(Additional charges required for these services)

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

*Frank J. Martell*

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

*4 - Turner*

DATE DELIVERED *3/1/65* SHOW WHERE DELIVERED (only if requested)

CS-1-71548-5-7 GPO

REGISTERED NO. *167253* POSTMARK

Value \$ *W* Spec. del'y fee \$ *W*

Fee \$ *W* Ret. receipt fee \$ *W*

Surcharge \$ *W* Rest. del'y fee \$ *W*

Postage \$ *W* ☐ Airmail

Postmaster, By *CH*

From *Pledgerville Ga*

To *Frank J Martell*  
*1215 19th St NW*

DC

POD Form 3800—May 1964 648-10-70403-6

REGISTERED NO. *167857* POSTMARK

Value \$ *W* Spec. del'y fee \$ *W*

Fee \$ *W* Ret. receipt fee \$ *10*

Surcharge \$ *W* Rest. del'y fee \$ *W*

Postage \$ *W* ☐ Airmail

Postmaster, By *CH*

From *W*

To *Samuel Barker*  
*1201 - Conn Ave*

DC

POD Form 3800—May 1964 648-10-70403-6

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S P E C I F I C A T I O N S

FOR

PROPOSED STORE

FOR

MR. WALTER S. CHARRON

TO BE ERECTED AT

1919 EYE STREET, N.W.

WASHINGTON, D.C.

EDMUND W. DREYFUSS & ASSOCIATES, A.I.A.  
Registered Architects  
1019 15th Street, N.W.  
Washington, D. C.  
RE 7-0120

NICHOLAS C. MANDRAGOS, P.E.  
Consulting Engineer  
Dent Road  
Rout 1, Box 40  
Brandywine, Md.  
STATE 2-7529

HENRY DOLLAR & ASSOCIATES  
Consulting Engineers  
2000 K St., N.W.  
Washington, D. C.  
ME 8-0340

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13. Insurance:

(a) The Contractor shall maintain such insurance as will protect himself and the Owner from direct, assumed and contingent liability for claims for damages, for personal injuries, including death, and/or damage to property, which may arise from operations under this contract whether such operations may be by himself or any sub-contractor or any one directly or indirectly employed by either of them. Such insurance shall be in such companies as may be selected by the Owner and certificates of such insurance shall be filed with the Owner. The amounts of public liability policy shall be \$50,000 for injury to one person and \$100,000 for the injury to more than one person in each accident. The amount of property damage insurance shall be \$150,000.

(b) The contractor shall maintain Workmen's Compensation Insurance and file with the County and City authorities and the Owner certificate thereof.

(c) The contractor shall also require that each of his sub-contractors shall carry proper and adequate policies, covering Workmen's Compensation and Public Liability as well as all liability assumed under the contract, covering the contractor and the Owner.

(d) Original policies taken out in the name of the sub-contractor shall be delivered to the contractor at the time the contract is signed.

(e) Should any person or persons or property be damaged or injured, including injuries causing or resulting in death, by the contractor, or by any sub-contractor, or by any person or persons employed under them, in the course of the performance by them of this agreement, or otherwise resulting from any action or operation under this agreement, whether by negligence or otherwise, said contractor shall alone be liable, responsible and answerable therefor and does hereby agree, to and with the said Owner, to hold harmless and indemnify the Owner of and from all claims, suits, actions, costs, counsel, fees, expenses, damages, judgments or decrees by reason thereof.

14. Neither the final certificate of payment, nor any provision in the contract shall release the Contractor of responsibility for faulty materials or workmanship, and unless otherwise specified, he shall remedy any defects due thereto and pay for any damages to other work resulting therefrom which shall appear within one year from final completion of work.

IV. EXCAVATING AND GRADING1. General:

(a) Include all clearing, excavating, filling, backfilling, grading and related items necessary to complete work shown on drawings and specified herein.

(b) Excavating and backfilling for sewers, water, gas, plumbing, heating and electric work is included under their respective divisions.

(c) Provide and place any additional earth needed to bring existing grades to new grades indicated or specified.

(d) Remove from site and dispose of excavated material unsuitable for fill or backfill.

2. Excavating:

(a) Excavate to elevations and dimensions indicated on the structural drawings plus sufficient space to permit the various trades to install their work, erection of forms, shoring, drain tile, waterproofing, masonry and the inspection of foundation. All footings shall be excavated to a depth not less than 6 inches below normal frost line. The normal frost line shall be considered as two (2) feet below final grade unless otherwise directed. All footings shall extend to a depth of at least 12 inches in undisturbed soil.

(b) Excavation for footings and trenches may be cut to accurate sizes and side forms omitted, if concrete is poured in clean-cut trenches without cave-ins.

(c) Should suitable bearing for foundations be encountered above the elevations indicated on drawings, excavation shall be carried to such elevations as approved by the Architect. Any savings thus obtained shall be credited to the job at an agreed unit price.

(d) If suitable bearing for foundations is not encountered at the depth indicated on drawings, the contractor shall immediately notify the Architect and shall not proceed further until instructions are given and necessary measurements made for purpose of establishing additional volume of excavation. Any such added excavation shall be executed at an agreed unit price.

(e) Material to be excavated is assumed to be earth and other materials that can be removed with power shovel.

If rock is encountered within limits of excavation, the contractor shall immediately notify the Architect and shall not proceed further until instructions are given and measurements made for purpose of establishing volume of rock excavation. Rock is defined as any stone or boulders that cannot be removed by a power shovel, 1/2 cu. yd. bucket capacity without use of continuous drilling or by explosives.

(f) General contractor shall control the grading around buildings so that ground is pitched to prevent water from running into excavated areas, of the building. He shall furnish all pumping required to keep excavated spaces clean of water during construction. Water shall not be conducted onto adjacent property.

(g) Placing of footings and foundations on earth fill will not be permitted. Care shall be taken that excavation does not extend below the exact lines of bottom of footings. Should the excavation through accident or otherwise be taken out below such lines, the contractor shall fill in the resulting excess excavation with concrete under walls and footings, and with gravel or other approved materials under slabs, at no additional cost. Loams, organic, or other materials undesirable shall be removed, as required by the Architect.

(h) When necessary, in the opinion of the Architect shoring or sheet piling shall be placed at the expense of the contractor, but the failure of the Architect to direct the placing of shoring or sheet piling will not relieve the contractor of his responsibility for damage resulting from its omission.

3. Backfilling, Grading and Fill: Backfilling around exterior foundation piers and walls shall be promptly accomplished. Selected materials from the required excavation shall be used. No trash shall be allowed to accumulate in the space to be backfilled and this space shall be well cleaned before backfill is placed. Whenever practicable, the backfill shall be consolidated with water by puddling. Where this method cannot be used, the material shall be placed in layers not more than 1 foot thick unless otherwise specified, and shall be compacted by tamping to the satisfaction of the Architect. Particular care shall be taken to avoid leaving wood where it will be buried. No backfilling shall be done until all underground wall work has been inspected by the Architect. Fill within the perimeter of the building walls and underneath all floor slabs shall be of bank run gravel spread in layers and completely compacted as herein specified. All the above fill shall be approved by the Architect, before depositing any on the site.

Contractor shall examine the site plan for existing and future grades. All surfaces to receive paving shall be carefully graded and well compacted before application of paving. Grades not otherwise indicated shall be uniform levels or slopes between points where elevations are given or between such points and existing finished grades. Abrupt change in slopes shall be rounded.

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March 10, 1965

Justin L. Edgerton, Esq.  
Pledger, Edgerton & Mahoney  
925 Washington Building  
Washington, D. C. - 20005

re: Fenton and Ash v. Walter S. and Marie L. Charron and Lesmark  
Inc. v. Harris & Ogus and Hartford Accident & Indemnity Co.

Dear Mr. Edgerton:

This will acknowledge receipt of your letter dated March 5, 1965, which I received on March 8, 1965, re the above. As you know, Mr. Martell and I settled this case on March 4, 1965. I was in another office of Martell's law firm for the purpose of taking a deposition in another case and before I left the building I picked up the releases.

I regret that your view of the worth of the case does not agree with mine, but perhaps after you make more than a " cursory examination of the facts " you will change your mind.

Also, to set the record straight, you know that you were advised by me that your client could have any portion of the \$1500.00 settlement you deemed proper. I did express the pious hope that you would permit me to retain as much of it as possible in view of the fact that Lesmark's indebtedness to me for legal services far exceeded the \$1500.00.

Very truly yours,  
BARKER & SAVITS

by: Samuel Barker

SB:fc

cc:  
Frank J. Martell, Esq.  
Galiher, Stewart & Clarke  
1215 - 19th St., N. W.  
Washington 36, D.C.

Dear Mr. Martell:

I am enclosing herewith release which has been duly executed by Lesmark Inc.

March 18, 1965

Frank J. Martell, Esq.  
 Galiher, Stewart & Clarke  
 1215 - 19th Street, N. W.  
 Washington 36, D. C.

re: Lesmark Inc. v. Harris & Ogus, et al

Dear Mr. Martell:

I return herewith praecipe and copy which I have signed on behalf of  
 Lesmark Inc.

Cordially yours,

Enclosures (2)  
 SB:fc

BARKER & SAVITS

cc: Justin L. Edgerton, Esq.  
 Pledger, Edgerton & Mahoney  
 925 Washington Bldg.  
 Washington, D. C. - 20005

By:  
 Samuel Barker

PLAINTIFF'S EXHIBIT 5a

**United States District Court  
 for the District of Columbia**

the \_\_\_\_\_ day of March 19 65

ISABEL C. BAUGH

v.  
 CHARTER, ET AL.

and

vs.

ASST

vs.

CHARTER, ET AL.

Civil  
 Action No.s 2354-59 and 3506-59

The Clerk of said Court will please dismiss with prejudice the claim of defendant  
 and third party plaintiff, Lesmark, Inc., against third party defendant, Harris &  
 Ogus, Inc., in the above-captioned actions.

GALIER, STEWART & CLARKE

By

Frank J. Martell  
 Atty. for Third Party Defendant,  
 Harris & Ogus, Inc.  
 1215 - 19th Street, N. W.

Address

Attorney for

Samuel Barker  
 1001 Connecticut Avenue, N. W.  
 Defendant and Third Party Plaintiff,  
 Lesmark, Inc.

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AGENCY AGREEMENT

with

HARTFORD ACCIDENT AND INDEMNITY COMPANY

*This Agreement* made this 1st day of April A. D., 1957, between the HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation of the State of Connecticut, with its principal office in the City of Hartford, State of Connecticut (hereinafter called the "Company") and

HARRIS & OGUS, INC.

\* \* \*

A corporation of the District of Columbia  
(hereinafter called the "Agent")

WITNESSETH

In consideration of the mutual covenants and agreements herein contained the parties hereto agree as follows:

The Company hereby grants authority to the Agent in the following territory, viz.:

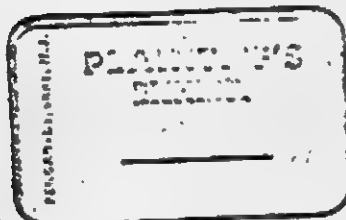
Washington, D. C. and Vicinity

to solicit and submit applications for the classes of insurance and fidelity and surety bonds for which a commission is specified in the Schedule of Commission Allowances annexed hereto and made a part hereof as "Exhibit A", to issue and deliver policies, bonds, certificates, endorsements and binders which the Company may from time to time, authorize to be issued and delivered, to collect and receipt for premiums thereon or therefor, to cancel such policies and bonds in the discretion of the Agent where cancellation is legally possible, and to retain out of premiums collected and paid over to the Company in accordance herewith, as full compensation on business placed with the Company by or through the Agent, commissions at the rates set forth in Exhibit A.

\* \* \*

## Hartford Accident and Indemnity Company

HARTFORD, CONNECTICUT



## CERTIFICATE OF INSURANCE

This is to certify that the insurance policies specified below have been issued by the Hartford Accident and Indemnity Company to the Insured named herein and that, subject to their provisions, exclusions and conditions, such policies afford the coverages indicated insofar as such coverages apply to the occupation or business of the Named Insured as stated.

1. Name of Insured: **LEWIS, INC.**  
 Address: **639 Sligo Avenue, Silver Spring, Maryland**  
 Occupation or Business: **Contractor**  
 Type of Work Covered: **Construction**  
 Location of Operations: **Virginia, Maryland and District of Columbia**

2. Coverages	Policy Number	Effective Date	Expiration Date	Limits of Liability
Workmen's Compensation	WH 726349	8/26/58	8/26/59	Statutory
Manufacturers' and Contractors' Bodily Injury Liability	HCS 601753	8/26/58	8/26/59	\$100,000.00 each person \$300,000.00 each accident
Manufacturers' and Contractors' Property Damage Liability	HCS 601753	8/26/58	8/26/59	\$100,000.00 each accident \$100,000.00 aggregate
<del>PROTECTIVE (INCLUDING CONTRACTED OPERATIONS)</del> Owners' or Contractors' Protective Bodily Injury Liability	<del>HCS 601753</del>	<del>8/26/58</del>	<del>8/26/59</del>	<del>\$100,000.00 each person \$300,000.00 each accident</del>
<del>PROTECTIVE (INCLUDING CONTRACTED OPERATIONS)</del> Owners' or Contractors' Protective Property Damage Liability	<del>HCS 601753</del>	<del>8/26/58</del>	<del>8/26/59</del>	<del>\$100,000.00 each accident \$100,000.00 aggregate</del>
Automobile Bodily Injury Liability	HF 706372	3/20/58	3/20/59	\$100,000.00 each person \$300,000.00 each accident
Automobile Property Damage Liability	HF 706372	3/20/58	3/20/59	\$100,000.00 each accident
Contractual Liability	HCS 601753	8/26/58	8/26/59	100,000.00 300,000.00 100,000.00
Contractual-Property	HCS 601753	8/26/58	8/26/59	100,000.00

## 3. Description of Automobiles:

1954 Ford Ranch Wagon and 1957 Chrysler 2 dr. Hardtop

4. In the event of cancelation of any of the foregoing policies, ten (10) days' written notice will be mailed to  
**Peterson Electric Power Company**  
 of **10th and T Streets, N. W.** at whose request this certificate is issued.  
**Washington, D. C.**

HARTFORD ACCIDENT AND INDEMNITY COMPANY

Date **February 11, 1959**  
 Form G-1949 2nd Rev. 3-55 Printed in U.S.A.

By.....  
**AROLD FIDMAN c/o HARTFORD & CO., INC.** *Authorized Representative*

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JA 137

# Hartford Accident and Indemnity Company

HARTFORD, CONNECTICUT

PLAINTIFF'S EXHIBIT 8  
(Note: P's Ex. 9 identical)



## CERTIFICATE OF INSURANCE

This is to certify that the insurance policies specified below have been issued by the Hartford Accident and Indemnity Company to the Insured named herein and that, subject to their provisions, exclusions and conditions, such policies afford the coverages indicated insofar as such coverages apply to the occupation or business of the Named Insured as stated.

1. Name of Insured: **Leckner, Inc.**  
 Address: **609 Cligo Ave., Silver Spring, Md.**  
 Occupation or Business: **Contractor**  
 Type of Work Covered: **Construction**  
 Location of Operations: **Virginia, Maryland and District of Columbia**

2. Coverages	Policy Number	Effective Date	Expiration Date	Limits of Liability
Workmen's Compensation	12726349	8/26/58	8/26/59	Statutory
Manufacturers' and Contractors' Bodily Injury Liability	HC6601753	8/26/58	8/26/59	\$ 100,000 each person \$ 300,000 each accident
Manufacturers' and Contractors' Property Damage Liability	HC6601753	8/26/58	8/26/59	\$ 100,000 each accident \$ 100,000 aggregate
Owners' or Contractors' Protective Bodily Injury Liability				\$ ..... each person \$ ..... each accident
Owners' or Contractors' Protective Property Damage Liability				\$ ..... each accident \$ ..... aggregate
Automobile Bodily Injury Liability				\$ ..... each person \$ ..... each accident
Automobile Property Damage Liability				\$ ..... each accident

3. Description of Automobiles:

4. In the event of cancellation of any of the foregoing policies, ten (10) days' written notice will be mailed to  
**Carl Henschel**  
 of **Lingo Janitor Supply Warehouse** at whose request this certificate is issued.  
**210 Massachusetts Ave., N.W.**  
**Washington, D. C.**

HARTFORD ACCIDENT AND INDEMNITY COMPANY

Date **June 13, 1959**

Form G-1949 2nd Rev. 3-55 Printed in U.S.A.

By.....  
**Harold Johnson c/o Harris & Sons, Inc.**  
 Authorized Representative

**HARTFORD ACCIDENT AND INDEMNITY COMPANY**  
HARTFORD, CONNECTICUT  
**CERTIFICATE OF INSURANCE**

## Named Insured and Address

Lesmark, Inc. and Michael Abrams  
639 Sligo Avenue, Silver Spring, Maryland

This is to certify that the HARTFORD ACCIDENT AND INDEMNITY COMPANY has issued to the named insured the policies enumerated below and such policies apply with respect to the hazards and for the coverages and limits of liability indicated by specific entry herein, subject to all of the terms of such policies.

Hazards	Policy Number	Effective Date	Expiration Date	Coverages and Limits of Liability			
				Bodily Injury Liability		Property Damage Liability	
				each person	each accident	each accident	aggregate
General Liability	MCS 601753	8/26/58	8/26/59	\$ 100 ,000	\$ 300 ,000	\$ 100 ,000	\$ 100 ,000
Premises-Operations				\$ ,000	\$ ,000	\$ ,000	XXXX
Elevators				\$ ,000	\$ ,000	\$ ,000	\$ ,000
Independent Contractors				\$ ,000	\$ ,000	\$ ,000	\$ ,000
Products-Completed Operations				Aggregate: \$ ,000	XXXX	XXXX	XXXX
Contractual-as described below				\$ ,000	\$ ,000	\$ ,000	\$ ,000
Automobile Liability							
Owned Automobiles				\$ ,000	\$ ,000	\$ ,000	XXXX
Hired Automobiles				\$ ,000	\$ ,000	\$ ,000	XXXX
Non-Owned Automobiles				\$ ,000	\$ ,000	\$ ,000	XXXX
Workmen's Compensation	WH 746349	8/26/58	8/26/59	Compensation — Statutory			

Location and description of operations, automobiles, contracts, etc. (For contracts, indicate type of agreement, party and date.)

Virginia, Maryland and District of Columbia

If policy is canceled,  
written notice will be given to:

Mr. Gartner,  
Rockville Volunteer Fire Department, Inc.  
22 South Perry Street  
Rockville, Maryland

HARTFORD ACCIDENT AND INDEMNITY COMPANY

Date

6/18/59

By.....

Authorized Representative

PLEASE DO NOT HOLD AS THIS IS  
A CANCE. + REWRITE

Hartford Accident and Indemnity Co.  
2000 Vermont Avenue, N.W.  
Washington 5, D. C.

QUEST. FOR ENDORSEMENT

For a (insert)  
the above policy (insert)  
(insert's name)

Date:

7-23-59

Name (as issued)

Lewards, Paul Michael Thomas

Policy Number

MCS 602-366

ADD:

① Add OTS coverage for a business  
office of 400 sq ft.

Address 639 Sligo Ave.  
Silver Spring, MD.

DELETE:

② Raise BI limits to 100,000 ON ENTIRE POLICY

CHANGE TO:

③ Give 5,000 PD on OTS coverage only  
DO NOT PUT PD ON MCS POLICY

EFFECTIVE DATE:

6-11-59 of OTS coverage + higher limits

REMARKS:

238-59-652

162-59-444

289

208

FW  
7-22  
Anchil 28-59  
7-1

WASH. 2 - 12/25/55  
(10-26-55) 82

To:

W. H. H. &amp; Co.

## INSURANCE

1145 19th STREET, N. W.  
WASHINGTON 6, D. C.  
REpublic 7-2484

SUBJECT

H. H. H. &amp; Co. - HCS 60753

DATE

7/22/50

## MESSAGE

Re 100/300/500 Commercial Liability & Property Damage on other policy between assured  
and H. H. H. & Co. - HCS 60753  
Also, Insurance Contract Liability & Property Damage for this job to 100/300/500.

SIGNED

H. H. H. &amp; Co., Inc. - pt

## REPLY

DATE

SIGNED

SENDER: EXTRACT YELLOW COPY  
FO. WARD WHITE & PINK COPIES

NCR  
Paper

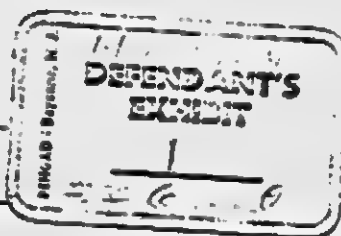
SULLIVAN BUSINESS FORMS - NE 6-4200 - WASH., D. C.

RECIPIENT: RETURN PINK COPY  
AND RETAIN WHITE FOR FILE

BEST COPY

from the original



*Wm. Lewis*

## INSURANCE

1145 19th STREET, N. W.  
WASHINGTON 3, D. C.  
REpublic 7-2484

SUBJECT

Michael Abrams MCS 501793 XH 746369 &amp; AG 706372

DATE

2/11/59

## MESSAGE

Effective today kindly issue endorsements changing name of insured to:

LESMARK, INC.

Also, increase limits on MCS policy to 100/300/100, also add Contractual liability and P. D.

As per attached clause and also Products

Completed Operations Liab. &amp; P. D.

On auto policy increase limits to 100/300/100

Forward endorsements to our office at your earliest convenience.

SIGNED

(Mrs) Pat Taylor

## REPLY

DATE

*4/1 - Pat asked Bob Bulbey to check on this**5/8 - Follow up*

SIGNED

Article 17 "Workmen's Compensation & Liability Insurance" Pepco Substation --  
1925 - Ford St. S.E. Wash. D.C.

The Contractor shall take out and maintain Workmen's Compensation Benefits to his employees engaged on said work, and their dependents, in accordance with the laws, and all amendments thereto, of the locality in which the work is performed. He shall also maintain in his own name Public Liability Insurance for bodily injury and death with limits of \$100,000.00 for any one person, or \$300,000.00 for any one accident; property damage \$100,000/100,000.00, and the said policy shall contain endorsement for Contractor's contractual obligation and for completed operations. The Contractor shall likewise require his subcontractors, if any, to provide for such Workmen's Compensation and Public Liability Insurance.

The Contractor shall take out and maintain Automobile Public Liability Insurance in the amount of \$100,000.00 and \$300,000.00 for each truck and/or passenger automobile and Property Damage coverage of \$100,000/100,000.00 for each truck and each automobile engaged in the work under this Contract.

All of the said policies shall be submitted to the Company for its approval. The Contractor agrees that the coverage shall not be cancelled until after the entire work has been completed, all settlements made, and all releases delivered to the Company.

The Contractor agrees to indemnify and save harmless the Company and any and all of the Company's officers, agents, employees, or servants, from any claims, loss or liability for death, injury, damage, cost, charge or expense, whether direct or indirect, to any person or property, regardless of whose negligence actually caused or is claimed by anyone to have caused, such death, injury or damage, which may happen, be done, or caused, arising out of the Contract or any work performed or to be performed hereunder.



*Pepco Spec.*  
*jos*

## A.I.A. SHORT FORM FOR SMALL CONSTRUCTION CONTRACTS

AGREEMENT AND GENERAL CONDITIONS  
BETWEEN CONTRACTOR AND OWNER

Pretrial Exhibit

  
Pretrial Examiner

Issued by The American Institute of Architects for use only when the proposed work is simple in character, small in cost, and when a stipulated sum forms the basis of payment. For other contracts the Institute issues the standard form of agreement between Contractor and Owner for construction of buildings and the standard general conditions in connection therewith for use when a stipulated sum forms the basis for payment.

1958 edition, copyright, 1936-1951 © 1958 by The American Institute of Architects, The Octagon, Washington, D. C.

THIS AGREEMENT made the

17<sup>th</sup>day of July in the year Nineteen Hundred and fifty-nine

by and between

Lesmark, Inc.

hereinafter called the Contractor, and

Walter S. Charron

hereinafter called the Owner.

WITNESSETH, That the Contractor and the Owner for the considerations hereinafter named agree as follows:

ARTICLE 1. SCOPE OF THE WORK—The Contractor shall furnish all of the material and perform all of the work for Flower Shop located at 1919 Eya St. N.E., Washington, D.C. as shown  
(Caption indicating the portion or portions of work covered)  
on the drawings and described in the specifications entitled proposed store for Walter S. Charron  
prepared by Edmund W. Dreyfuss Architect  
all in accordance with the terms of the contract documents.

ARTICLE 2. TIME OF COMPLETION—The work shall be substantially completed in  
100 Calendar days

ARTICLE 3. CONTRACT SUM—The Owner shall pay the Contractor for the performance of the contract subject to the additions and deductions provided therein in current funds, the sum of Forty Thousand

Six Hundred & Ninety-five dollars. (\$42,695.00)  
(List of changes to Plans & Specifications, & amounts deducted, attached).

ARTICLE 4. PROGRESS PAYMENTS—The Owner shall make payments on account of the contract, upon requisition by the Contractor, as follows:

Stage payments, percentage of total contract, as per schedule of Financing organization.

ARTICLE 5. ACCEPTANCE AND FINAL PAYMENT—Final payment shall be due ten days after completion of the work, provided the contract be then fully performed, subject to the provisions of Article 16 of the General Conditions.

ARTICLE 6. CONTRACT DOCUMENTS—Contract Documents are as noted in Article 1 of the General Conditions. The following is an enumeration of the drawings and specifications:

Drawings 1,2,3 dated May 11, 1959  
P-1 of 1 dated May 11, 1959  
M-1 of 1 dated May 11, 1959  
E-1 of 1 dated May 11, 1959  
Specifications, pages 1 through 57 inclusive  
Addendum #1

## GENERAL CONDITIONS

### ARTICLE 1

#### CONTRACT DOCUMENTS

The contract includes the AGREEMENT and its GENERAL CONDITIONS the DRAWINGS, and the SPECIFICATIONS. Two or more copies of each, as required, shall be signed by both parties and one signed copy of each retained by each party.

The intent of these documents is to include all labor, materials, appliances and services of every kind necessary for the proper execution of the work, and the terms and conditions of payment therefor.

The documents are to be considered as one, and whatever is called for by any one of the documents shall be as binding as if called for by all.

### ARTICLE 2

#### SAMPLES

The Contractor shall furnish for approval all samples

as directed. The work shall be in accordance with approved samples.

### ARTICLE 3

#### MATERIALS, APPLIANCES, EMPLOYEES

Except as otherwise noted, the Contractor shall provide and pay for all materials, labor, tools, water, power and other items necessary to complete the work.

Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality.

All workmen and sub-contractors shall be skilled in their trades.

### ARTICLE 4

#### ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees.

He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof.

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**ARTICLE 5**

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**SURVEYS, PERMITS, AND REGULATIONS**

The Owner shall furnish all surveys unless otherwise specified. Permits and licenses necessary for the prosecution of the work shall be secured and paid for by the Contractor. Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified. The Contractor shall comply with all laws and regulations bearing on the conduct of the work and shall notify the Owner if the drawings and specifications are at variance therewith.

---

**ARTICLE 6**

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**PROTECTION OF WORK, PROPERTY, AND PERSONS**

The Contractor shall adequately protect the work, adjacent property and the public and shall be responsible for any damage or injury due to his act or neglect.

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**ARTICLE 7**

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**INSPECTION OF WORK**

The Contractor shall permit and facilitate inspection of the work by the Owner and his agents and public authorities at all times.

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**ARTICLE 8**

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**CHANGES IN THE WORK**

The Owner may order changes in the work, the Contract Sum being adjusted accordingly. All such orders and adjustments shall be in writing. Claims by the Contractor for extra cost must be made in writing before executing the work involved.

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**ARTICLE 9**

---

**CORRECTION OF WORK**

The Contractor shall re-execute any work that fails to conform to the requirements of the contract and that appears during the progress of the work, and shall remedy any defects due to faulty materials or workmanship which appear within a period of one year from the date of completion of the contract. The provisions of this article apply to work done by subcontractors as well as to work done by direct employees of the Contractor.

---

**ARTICLE 10**

---

**OWNER'S RIGHT TO TERMINATE THE CONTRACT**

Should the Contractor neglect to prosecute the work properly, or fail to perform any provision of the contract, the Owner, after seven days' written notice to the Contractor, and his surety if any may, without prejudice to any other remedy he may have, make good the deficiencies and may deduct the cost thereof from the payment then or thereafter due the contractor or, at his option, may terminate the contract and take possession of all materials, tools, and appliances and finish the work by such means as he sees fit, and if the unpaid balance of the contract price exceeds the expense of finishing the work, such excess shall be paid to the Contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Owner.

---

**ARTICLE 11**

---

**CONTRACTOR'S RIGHT TO TERMINATE CONTRACT**

Should the work be stopped by any public authority for a period of thirty days or more, through no fault of the Contractor, or should the work be stopped through act or neglect of the Owner for a period of seven days, or should the Owner fail to pay the Contractor any payment within seven days after it is due, then the Contractor upon seven days' written notice to the Owner, may stop work or terminate the contract and recover from the Owner payment for all work executed and any loss sustained and reasonable profit and damages.

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**ARTICLE 12**

---

**PAYMENTS**

Payments shall be made as provided in the Agreement. The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner, other than those arising from unsettled liens or from faulty work appearing thereafter, as provided for in Article 9, and of all claims by the Contractor except any previously made and still unsettled. Payments otherwise due may be withheld on account of defective work not remedied, liens filed, damage by the Contractor to others not adjusted, or failure to make payments properly to subcontractors or for material or labor.

---

**ARTICLE 13**

---

**CONTRACTOR'S LIABILITY INSURANCE**

The Contractor shall maintain such insurance as will protect him from claims under workmen's compensation acts and other employee benefits and from claims for damages because of bodily injury, including death, and from claims for damages to property which may arise both out of and during operations under this contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by

either of them. This insurance shall be written for not less than any limits of liability specified as part of this contract. Certificates of such insurance shall be filed with the Owner and architect.

#### ARTICLE 14

##### OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for and at his option may maintain such insurance as will protect him from his contingent liability to others for damages because of bodily injury, including death, which may arise from operations under this contract, and any other liability for damages which the Contractor is required to insure under any provision of this contract.

#### ARTICLE 15

##### FIRE INSURANCE WITH EXTENDED COVERAGE

The Owner shall effect and maintain fire insurance with extended coverage upon the entire structure on which the work of this contract is to be done to one hundred per cent of the insurable value thereof, including items of labor and materials connected therewith whether in or adjacent to the structure insured, materials in place or to be used as part of the permanent construction including surplus materials, shanties, protective fences, bridges, temporary structures, miscellaneous materials and supplies incident to the work, and such scaffoldings, stagings, towers, forms, and equipment as are not owned or rented by the contractor, the cost of which is included in the cost of the work. **EXCLUSIONS:** The insurance does not cover any tools owned by mechanics, any tools, equipment, scaffolding staging, towers, and forms owned or rented by the Contractor, the capital value of which is not included in the cost of the work, or any cook shanties, bunk houses or other structures erected for housing the workmen. The loss, if any, is to be made adjustable with and payable to the Owner as Trustee for the insureds and contractors and subcontractors as their interests may appear, except in such cases as may require payment of all or a proportion of said insurance to be made to a mortgagee as his interests may appear.

Certificates of such insurance shall be filed with the Contractor if he so requires. If the Owner fails to effect or maintain insurance as above and so notifies the Contractor, the Contractor may insure his own interests and that of the subcontractors and charge the cost thereof to the Owner. If the Contractor is damaged by failure of the Owner to maintain such insurance or to so notify the Contractor, he may recover as stipulated in the contract for recovery of damages. If other special insurance not herein provided for is required by the Contractor, the Owner shall effect such insurance at the Contractor's expense by appropriate riders to his fire insurance policy. The Owner, Contractor, and all subcontractors waive all rights, each against the others, for damages caused by fire or other perils covered by insurance provided for under the terms of this contract, except such rights as they may have to the proceeds of insurance held by the Owner as Trustee.

The Owner shall be responsible for and at his option may insure against loss of use of his existing property, due to fire or otherwise, however caused.

If required in writing by any party in interest, the Owner as Trustee shall, upon the occurrence of loss, give bond for the proper performance of his duties. He shall deposit any money received from insurance in an account separate from all his other funds and he shall distribute it in accordance with such agreement as the parties in interest may reach or under an award of arbitrators appointed, one by the Owner, another by joint action of the other parties in interest, all other procedure being as provided elsewhere in the contract for arbitration. If after loss no special agreement is made, replacement of injured work shall be ordered and executed as provided for changes in the work.

The Trustee shall have power to adjust and settle any loss with the insurers unless one of the Contractors interested shall object in writing within three working days of the occurrence of loss, and thereupon arbitrators shall be chosen as above. The Trustee shall in that case make settlement with the insurers in accordance with the directions of such arbitrators, who shall also, if distribution by arbitration is required, direct such distribution.

#### ARTICLE 16

##### LIENS

The final payment shall not be due until the Contractor has delivered to the Owner a complete release of all liens arising out of this contract, or receipts in full covering all labor and materials for which a lien could be filed, or a bond satisfactory to the Owner indemnifying him against any lien.

#### ARTICLE 17

##### SEPARATE CONTRACTS

The Owner has the right to let other contracts in connection with the work and the Contractor shall properly cooperate with any such other contractors.

#### ARTICLE 18

##### THE ARCHITECT'S STATUS

The Architect shall have general supervision of the work. He has authority to stop the work if necessary to insure its proper execution. He shall certify to the Owner when payments under the contract are due and the amounts to be paid. He shall make decisions on all claims of the Owner or Contractor. All his decisions are subject to arbitration.

#### ARTICLE 19

##### ARBITRATION

Any disagreement arising out of this contract or from the breach thereof shall be submitted to arbitration, and



judgment upon the award rendered may be entered in the court of the forum, state or federal, having jurisdiction. It is mutually agreed that the decision of the arbitrators shall be a condition precedent to any right of legal action that either party may have against the other. The arbitration shall be held under the Standard Form of Arbitration Procedure of The American Institute of Architects or under the Rules of the American Arbitration Association.

## ARTICLE 20

## CLEANING UP

The Contractor shall keep the premises free from accumulation of waste material and rubbish and at the completion of the work he shall remove from the premises all rubbish, implements and surplus materials and leave the building broom-clean.

IN WITNESS WHEREOF the parties hereto executed this Agreement, the day and year first above written.

LESMARK, INC.

Contractor

  
Michael M. Abrams, President

Walter C. Charron

Owner



## ENDORSEMENT # 7

Named Insured and Address

This endorsement forms a part of Policy No. 12-100-80-755.  
 It is issued by the HARTFORD FIRE INSURANCE COMPANY GROUP com-  
 panies designated therein, and takes effect as of the effective date of  
 this endorsement unless another effective date is stated herein.

LEONARD, INC., A MICHAEL AGRA. C  
 680 BLISS AVE.,  
 SILVER SPRING, MARYLAND

Effective date 7-70-59

12:01 A. M., standard time at the address of the named insured  
as stated herein.

Additional Premium: \$0.00 RET. Return Premium: \$ TO BE SET.

B. I. \$ \_\_\_\_\_ P. D. \$ \_\_\_\_\_ M. P. \$ \_\_\_\_\_ Coll. \$ \_\_\_\_\_  
 Comp. \$ \_\_\_\_\_ Fire \$ \_\_\_\_\_ Theft \$ \_\_\_\_\_ Other \$ \_\_\_\_\_

In consideration of the premium charged it is hereby understood and agreed

that ITEM # 3 (Item # ) (Endorsement # ) of the policy

to which this endorsement is attached is amended to INCLUDE  
 (Read as follows) (Include) (Exclude).

## LIMITS OF LIABILITY

## COVERAGE B PROPERTY DAMAGE

\$25,000 ACCIDENT

\$50,000 AGGREGATE

CODE	RATE	CODE	RATE
5015	DC .132	3457	DC .130
	VA .132		WD .168
	MO .132		VA .130
3495	DC .004	0514	
	WD .004		.018
	VA .004		
239	DC .005		



POLICY PERIOD 8-23-58 TO 8-23-59

Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.  
 This endorsement shall not be binding unless countersigned by a duly authorized agent of the company or companies.

42 WASHINGTON BRANCH OFFICE

620131 HARTIS &amp; HARTFORD FIRE INSURANCE COMPANY GROUP

AGENTS, INC.

Hartford Fire Insurance Company  
 Hartford Accident and Indemnity Company  
 Citizens Insurance Company of New Jersey

New York Underwriters Insurance Company  
 Twin City Fire Insurance Company

S-6-59/HE

Countersigned by \_\_\_\_\_

Authorized Agent

## ENDORSEMENT # 6

Named Insured and Address

LESTER, INC., & MICHAEL ABRAMS  
680 SLIGO AVE.,  
SILVER SPRING, MARYLAND

Endorsement forms a part of Policy No. 42 WOS 001733  
issued by the HARTFORD FIRE INSURANCE COMPANY GROUP com-  
pany or companies designated therein, and takes effect as of the effective date of  
said policy unless another effective date is stated herein.

Effective date..... 8-21-59

12:01 A. M., standard time at the address of the named insured  
as stated herein.

Additional Premium: \$ TO BE DFT. Return Premium: \$ TO BE DFT.

B. I. \$ \_\_\_\_\_

P. D. \$ \_\_\_\_\_

M. P. \$ \_\_\_\_\_

Coll. \$ \_\_\_\_\_

Comp. \$ \_\_\_\_\_

Fire \$ \_\_\_\_\_

Theft \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

In consideration of the premium charged it is hereby understood and agreed

that ITEM # 5 of the policy

(Item # ) (Endorsement # )

to which this endorsement is attached is amended to READ AS FOLLOWS.

(Read as follows) (Include) (Exclude).

## LIMITS OF LIABILITY

## COVERAGE A

## BODILY INJURY

\$100,000 PERSON

\$300,000 ACCIDENT

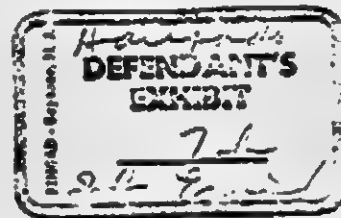
CODE	RATE
5645	DC .410
	VA .139
	MD .185

8485	DC .006
	MD .008
	VA .006

259	DC .046
-----	---------

3457	DC .631
	MD .246
	VA .154

0514	.037
------	------



POLICY PERIOD 8-26-58 TO 8-26-59

Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.  
This endorsement shall not be binding unless countersigned by a duly authorized agent of the company or companies.

42 WASHINGTON BRANCH OFFICE

620174 HARRIS &amp; OGUS INC.

8-6-59/HE

HARTFORD FIRE INSURANCE COMPANY GROUP

Hartford Fire Insurance Company  
Hartford Accident and Indemnity Company  
Citizens Insurance Company of New Jersey

New York Underwriters Insurance Company  
Twin City Fire Insurance Company

Countersigned by.....

Authorized Agent

COPY AVAILABLE

original bound volume



## ENDORSEMENT # 5

LITY

## AMENDMENT OF DECLARATIONS

Named Insured and Address

LESMARK, INC.  
639 SLIGO AVENUE,  
SILVER SPRING, MARYLAND



PREPARED - NOTED  
This endorsement forms a part of Policy No. 42 MCS 601753  
by the HARTFORD FIRE INSURANCE COMPANY GROUP com-  
pany or companies designated therein, and takes effect as of the effective date of  
this policy unless another effective date is stated herein.

Effective date

7-8-59

12:01 A. M., standard time at the address of the named insured  
as stated herein.

It is agreed that the policy is amended with respect to such of the following particulars as are indicated by specific entry in connection therewith.

1. Item 1, Named Insured to read:

LESMARK, INC. &amp; MICHAEL ABRAMS

2. Item 1, Address of Named Insured to read:

3. Item 1, Legal status of Named Insured to read: ☐ Individual ☐ Corporation ☐ Partnership

4. Item 2, Policy Period to read: From

to

POLICY PERIOD: 8-26-58 TO: 8-26-59

Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.  
This endorsement shall not be binding unless countersigned by a duly authorized agent of the company or companies.

## HARTFORD FIRE INSURANCE COMPANY GROUP

Hartford Fire Insurance Company  
Hartford Accident and Indemnity Company  
Citizens Insurance Company of New Jersey

New York Underwriters Insurance Company  
Northwestern Fire and Marine Insurance Company  
Twin City Fire Insurance Company

42 WASHINGTON BRANCH OFFICE  
620134 HARRIS & OGUS, INC.

7-17-59 DA

Countersigned by

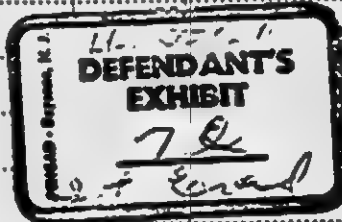
Authorized Agent

## HARTFORD EXHIBIT 7e

Term	Entry Year	Count	R-N	Inst.	Adm. Term	Type	Date			
5			7	0	2	1	2-11-59			
Pol. Yr.	State	R. I. Prem.	Comm.	Line	City	Loss	RI	Exposure	Class	P. D. and Coll. Prem.
18		19.25	250	0/37	00	56	0	0	0555	13.50

SENT TO RECORDS  
JUL 22 1959  
WASHINGTON

LL-350-1  
DEFENDANT'S  
EXHIBIT  
72  
2-1-Edward



CONTRACTUAL LIABILITY COVERAGE ENDORSEMENT

Policy Period: 8-26-58 to 8-26-59

Named Insured and Address

LESHARK, INC.  
333 CLICO AVENUE,  
SILVER SPRING, MARYLAND

This endorsement forms a part of Policy No. 12 100 601753 issued by the HARTFORD FIRE INSURANCE COMPANY GROUP company or companies designated therein, and takes effect as of the effective date of said policy unless another effective date is stated herein.

Effective date

2-11-59

12:01 A. M., standard time at the address of the named insured as stated herein.

Schedule.—The insurance afforded under this endorsement is only with respect to such and so many of the following coverages as are indicated by specific limits of liability.

POTOMAC ELECTRIC POWER COMPANY, 10TH & E ST., N.W., WASHINGTON, D.C.

Coverages	Limits of Liability
Y — Contractual Bodily Injury Liability	100 thousand dollars each person 300 thousand dollars each accident
Z — Contractual Property Damage Liability	100 thousand dollars each accident 100 thousand dollars aggregate

Designation of Contracts	Premium Bases	Rates		Advance Premiums	
		Cov. Y	Cov. Z	Cov. Y	Cov. Z
BETWEEN LESHARK INC. & POTOMAC ELECTRIC POWER COMPANY BROAD FORM CONTRACTS	(a) No. Insured (b) Cost TO BE DET.	(a) Per Contract (b) Per \$100 of Cost .148	.061	11.25 19.25	11.25 13.50

DEFENDANT'S EXHIBIT

CODE 0555

POLICY PERIOD: 8-26-58 TO: 8-26-59 Total Advance Premium for this Endorsement \$19.25 \$13.50

The company agrees with the named insured, in consideration of the payment of the premium and in reliance upon the statements in the declarations and in the schedule herein and subject to the limits of liability, exclusions, conditions and other terms of this endorsement:

INSURING AGREEMENTS

I. Coverage Y — Contractual Bodily Injury Liability

To pay on behalf of the insured all sums which the insured, by reason of the liability assumed by him under any written contract designated in the schedule herein, shall become legally obligated to pay as damages because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person and caused by accident.

Coverage Z — Contractual Property Damage Liability

To pay on behalf of the insured all sums which the insured, by reason of the liability assumed by him under any written contract designated in the schedule herein, shall become legally obligated to pay as damages because of injury to or destruction of property, including the loss of use thereof, caused by accident.

II. Defense, Settlement, Supplementary Payments. The provisions of Insuring Agreement II of the policy, other than paragraph (b) (3) thereof, are applicable to the insurance afforded under this endorsement. With respect to such injury, sickness, disease or destruction as is covered by the terms of this endorsement, the company also shall defend an arbitration proceeding wherein an indemnitee under a written contract designated in the schedule below seeks damages against the insured on account thereof, and wherein the company is entitled to exercise the insured's rights in the choice of arbitrators and in the conduct of such arbitration proceedings.

III. Definition of Insured. The provisions of Insuring Agreement III of the policy are applicable to the insurance afforded under this endorsement.

IV. Endorsement Period, Territory. This endorsement applies only to accidents which occur on and after the effective date hereof, during the policy period and within the United States of America, its territories or possessions, or Canada.

(Over)

Form L-2259 2nd Rev. Printed in U. S. A. 7-57

12 WASHINGTON BRANCH OFFICE  
6201 34 HARRIS & OGUS, INC.

7-11-59



## EXCLUSIONS

This endorsement does not apply:

- (a) to liability for any warranty of goods or products;
- (b) to damages awarded in arbitration other than an arbitration proceeding as described in Insuring Agreement II of this endorsement but this exclusion shall not apply as respects a lease of premises, easement agreement, agreement required by municipal ordinance, sidetrack agreement or elevator or escalator maintenance agreement;
- (c) to any obligation for which the insured may be held liable in an action on a contract by a person not a party thereto;
- (d) if the insured or indemnitee is an architect, engineer or surveyor, to injury, sickness, disease, death or destruction arising out of defects in maps, plans, designs or specifications, prepared, acquired or used by the insured or indemnitee;
- (e) to injury, sickness, disease, death or destruction due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;
- (f) to liability imposed upon any indemnitee, as a person or organization engaged in the business of manufacturing, selling or distributing alcoholic beverages, or as an owner or lessor of premises used for such purposes, by reason of any statute or ordinance pertaining to the sale, gift, distribution or use of any alcoholic beverage;
- (g) under coverage Y, to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;
- (h) under coverage Z, to injury to or destruction of (1) property owned or occupied by or rented to the insured, or (2) except with respect to liability under sidetrack agreements covered by this endorsement, property used by or in the care, custody or control of the insured or property as to which the insured for any purpose is exercising physical control;
- (i) under coverage Z, to injury to or destruction of any goods, products or containers thereof manufactured, sold, handled or distributed or premises alienated by the named insured, or work completed by or for the named insured, out of which the accident arises;
- (j) under coverage Z, to any of the following insofar as any of them occur on or from premises owned by or rented to the named insured and injure or destroy buildings or property therein and are not due to fire: (1) the discharge, leakage or overflow of water or steam from plumbing, heating, refrigerating or air-conditioning systems, standpipes for fire hose, or industrial or domestic appliances, or any substance from automatic sprinkler systems, (2) the collapse or fall of tanks or the component parts or supports thereof which form a part of automatic sprinkler systems, or (3) rain or snow admitted directly to the building interior through defective roofs, leaders or spouting, or open or defective doors, windows, skylights, transoms or ventilators.

## CONDITIONS

1. **Policy Conditions.** All of the Conditions of the policy which would apply to the bodily injury liability or property damage liability coverages thereof shall apply to the insurance under this endorsement except those respecting "Premium", "Definitions", "Limits of Liability" and "Assistance and Cooperation of the Insured".

2. **Limits of Liability**

- (a) **Coverage Y.** The limit of contractual bodily injury liability stated in the schedule herein as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by one person as the result of any one accident; the limit of such liability stated in the schedule herein as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by two or more persons as the result of any one accident.
- (b) **Coverage Z.** The limit of contractual property damage liability stated in the schedule herein as applicable to "each accident" is the total limit of the company's liability for all damages arising out of injury to or destruction of all property of one or more persons or organizations, including the loss of use thereof, as the result of any one accident; the limit of such liability stated in the schedule herein as "aggregate" is, subject to the above provision respecting "each accident", the total limit of the company's liability for all damages. Said aggregate limit applies separately to each project with respect to operations being performed away from premises owned by or rented to the named insured.
- (c) The inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

3. **Assistance and Cooperation of the Insured.** The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits and arbitration proceedings covered hereunder. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense.

4. **Premium.** The premium bases and rates for the contracts described in the schedule herein are stated therein.

The premium with respect to which "cost" is the basis, is an estimated premium only. Upon termination of this endorsement, the earned premium shall be computed in accordance with the company's rules, rates, rating plans, premiums and minimum premiums applicable to this insurance. If the earned premium thus computed exceeds the estimate advance premium paid, the named insured shall pay the excess to the company; if less, the company shall return to the named insured the unearned portion paid by such insured.

When used as a premium basis the word "cost" means the total cost to any indemnitee of all work let or sub-let in connection with each specific project, including the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the owner, contractor or subcontractor, including all fees, allowances, bonuses or commissions made, paid or due.

Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.

This endorsement shall not be binding unless countersigned by a duly authorized agent of the company or companies; provided that if this endorsement takes effect as the effective date of the policy and, at issue of said policy, forms a part thereof, countersignature on the declarations page of said policy by a duly authorized agent of the company or companies shall constitute valid countersignature of this endorsement.

## HARTFORD FIRE INSURANCE COMPANY GROUP

Hartford Fire Insurance Company  
Hartford Accident and Indemnity Company  
Citizens Insurance Company of New Jersey

New York Underwriters Insurance Company  
Northwestern Fire and Marine Insurance Company  
Twins City Fire Insurance Company

Countersigned by \_\_\_\_\_

Authorized Agent

Term	Entry Year	Count	R-N	Last	And	Term	Type	Date		
5			3	6	2		1	2-11-57		
Pol. Yr.	State	2. L. Prem.	Comm.	Line	City	Lmts	KE	Exposure	Class	P. D. and Coll. Prem.
55		15.40	250	0135	00	26	0	0.	1314	8.50
56			250	0122	00	6	2	0.	9731	5.00
		15.40								13.50

Form L-2294 LIABILITY CODING APRON Printed in U. S. A.

BEST CO

from the or

## LIABILITY

## ENDORSEMENT # 3

(For use with MCS Policy only)

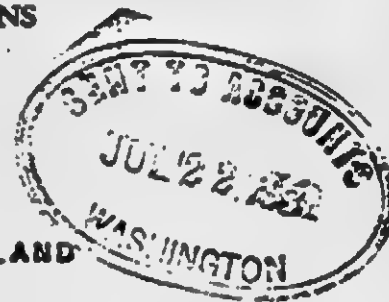
## INCREASED LIMITS OF LIABILITY FOR SPECIFIC OPERATIONS

ADDITIONAL PREMIUM: \$28.90 (15.40 B.I. &amp; 13.50 P.D.)

Named Insured and Address

This endorsement forms a part of Policy No. 42 MCS 601753 and takes effect as of the effective date of said policy unless another effective date is stated herein.

LESMARK, INC.  
639 SLIGO AVENUE,  
SILVER SPRING, MARYLAND



PREPARED - NOTED  
WASHINGTON

Effective date 2-11-59

12:01 A. M., standard time at the address of the named insured as stated herein.

It is agreed that with respect to such insurance as is afforded by the policy, the limit of the company's liability shall be increased as read as stated herein but only as respects the insured's operations at **POTOMAC ELECTRIC POWER COMPANY, 10TH & E ST. N.W., WASHINGTON D.C.**

## Coverages

## Limits of Liability

A — Bodily Injury Liability

100 thousand dollars each person  
300 thousand dollars each accident  
300 thousand dollars aggregate

B — Property Damage Liability

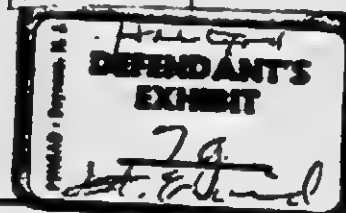
100 thousand dollars each accident  
100 thousand dollars aggregate

what is address  
of job?

no p.d. on  
basic policy  
cov. this job  
only.

Premium for the insurance afforded by this endorsement shall be computed on the basis of the following rates.

Description of Hazards	Code No.	Premium Basis	Rates		Premium	
			Coverage A	Coverage B	Coverage A	Coverage B
The descriptions of hazards and classifications stated below are subject to the exclusions, conditions and other terms of this policy.	5645	TO	.416	.149	TO	TO
	3485		.006	.004		
	3457	BE	.631	.203	BE	BE
	0514		.037	.020	DET.	DET.
INCLUDE DIVISION 4 PRODUCTS GENERAL CONTRACTORY-BUILDING CONSTRUCTION (NOT PREFABRICATED) BUILDINGS-N.O.C.	1219	DET.	.231	.170	N.P. 15.40	N.P. 8.50
INCLUDE CONTRACTUAL (SEE ENDRS. L-2520)						
INCREASE LIMITS FLAT CHARGE						5.00
POLICY PERIOD: 8-26-53 TO: 8-26-59						



Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.

This endorsement shall not be binding unless countersigned by a duly authorized agent of the company; provided that if this endorsement takes effect as of the effective date of the policy, countersignature on the declarations page of said policy by a duly authorized agent of the company shall constitute valid countersignature of this endorsement.

## HARTFORD ACCIDENT AND INDEMNITY COMPANY

42 WASHINGTON BRANCH OFFICE  
620134 HARRIS & OGUS, INC.  
7-17-59 PA

Hartford, Connecticut

Countersigned by

Authorized Agent

Form L-2470 Printed in U. S. A. 9-55

PY AVAILABLE

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ABILITY

ENDORSEMENT 2

## AMENDMENT OF DECLARATIONS

Named Insured and Address

This endorsement forms a part of Policy No. 12-100-001732  
 issued by the HARTFORD FIRE INSURANCE COMPANY GROUP com-  
 pany or companies designated therein, and takes effect as of the effective date of  
 said policy unless another effective date is stated herein.

MICHAEL ADAMS  
 650 E. 1st Avenue,  
 SILVER SPRING, MARYLAND

Effective date.....

2-11-50

12:01 A. M., standard time at the address of the named insured as stated herein.

It is agreed that the policy is amended with respect to such of the following particulars as are indicated by specific entry in connection therewith:

1. Item 1, Named Insured to read:

ECONOMY, INC.

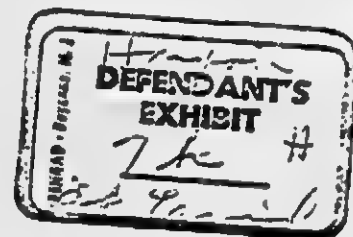
2. Item 1, Address of Named Insured to read:

3. Item 1, Legal status of Named Insured to read: ☐ Individual ☐ Corporation ☐ Partnership

4. Item 2, Policy Period to read: From

to

POLICY PERIOD: 8-20-50 TO: 8-26-50



Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.  
 This endorsement shall not be binding unless countersigned by a duly authorized agent of the company or companies.

## HARTFORD FIRE INSURANCE COMPANY GROUP

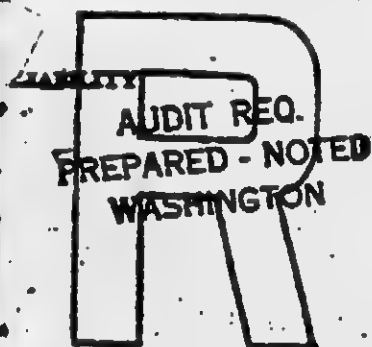
Hartford Fire Insurance Company  
 Hartford Accident and Indemnity Company  
 Citizens Insurance Company of New Jersey

New York Underwriters Insurance Company  
 Northwestern Fire and Marine Insurance Company  
 Twin City Fire Insurance Company

10 WASHINGTON BRANCH OFFICE  
 GEORGE HARTIG & COUS, INC.

Countersigned by.....  
 Authorized Agent

Form L-2530 Rev. Printed in U. S. A.



ENDORSEMENT # 1  
INTERIM PREMIUM ADJUSTMENT ENDORSEMENT

Named Insured and Address

MICHAEL ABRAMS  
839 SLIGO AVE.,  
SILVER SPRING, MARYLAND



This endorsement forms a part of Policy No. MCS 601753 and takes effect as of the effective date of said policy unless another effective date is stated herein.

Effective date: 8-26-58

12:01 A. M., standard time at the address of the named insured as stated herein.

It is agreed that this policy is issued upon an interim premium adjustment basis and that such premiums as may be stated in the Declarations for which the premium basis is "admissions", "cost", "receipts", "remuneration", "sales" or "units" are deposit premiums only.

Immediately after the expiration of each period of **QUARTERLY** months from the inception date of the policy, the earned premium for such insurance as is afforded on such a premium basis shall be computed in accordance with the rates stated in the policy or in the manuals in use by the company and shall be paid immediately by the insured. Such deposit premium shall apply on the final payment of earned premium.

Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.

This endorsement shall not be binding unless countersigned by a duly authorized agent of the company; provided that if this endorsement takes effect as of the effective date of the policy, countersignature on the declarations page of said policy by a duly authorized agent of the company shall constitute valid countersignature of this endorsement.

HARTFORD ACCIDENT AND INDEMNITY COMPANY  
Hartford, Connecticut

Countersigned by \_\_\_\_\_

Authorized Agent

Form L-494 and Rev. 7-55 Printed in U.S.A.

## LIABILITY

## EXTENSION SCHEDULE FOR OTS or MCS POLICIES

This schedule forms a part of Policy No. ~~12-1100~~ <sup>88275</sup>, issued by the HARTFORD ACCIDENT AND INDEMNITY COMPANY

of Hartford, Conn., in favor of MICHAEL AGGANS

Description of Hazards The descriptions of hazards and classifications stated below are subject to the exclusions, conditions and other terms of this policy.	Code No.	Premium Bases	Rates		Advance Premiums	
			Coverage A	Coverage B	Coverage A	Coverage B
CARPENTRY IN THE CONSTRUCTION OF DETACHED PRIVATE RESIDENCES FOR OR OCCUPY BY ONE OR TWO FAMILIES, AND PRIVATE GARAGES IN CONNECTION THEREWITH	3345	C) 1400 DC .352 C) IF ANYVA.131 C)18,400 LD.174			D/P 44.93	
CLERICAL OFFICE EMPLOYEES-N.O.C.	3455	C)4200. DC .025 4400. LD .007 IF ANYVA.006				
4001-25-25-27 HAYNES STREET, N.E. WASHINGTON, D.C. VACANT LAND-EXCLUDING REAL ESTATE DEVELOPMENT PROPERTY	239	B) 60 DC .044			N/P 3.65 48.56 INCL	
CARPENTRY N.O.C.	3457	3400. DC .535 105. LD .232 IF ANYVA .145				



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## JA 159

**Hartford Accident and****Notes to Underwriters:**

Policy No. 42 MCS 601753

Policy No.

42 MCG 601753

Previous Policy No.

~~WICHAMER ROYALMS~~ Lee MARK, Inc  
639 SLIGO AVE., & Michael  
SILVER SPRING, MARYLAND 154

**Insured  
and  
Address**

**Pol Code 01232**

Code, Gen. Agt., Br.

**WASHINGTON OFFICE**

Code No. and Agent, Sub-Agent or Broker 25

HARRIS & OGDEN, INC.

**Item 2. Policy Period:** 12:01 A. M., standard time at the address of the insured as stated herein:

**From**

8-25-58 59 T. 8-26-58 60

Item 3.		Term	Entry Year	Count	Rate	R.W	Int.	And Term	Type	
Divisions	Coverages	Premiums	Limit	Comm.	Line	City	Limit	EE	Exposure	Class
1. Premises-Operations	A-Bodily Injury	\$4.93	Coverage A							
	B-Property Damage	\$3.63	\$100,000 person	250	0420	00	5	1	0.	Y000
	B-Property Damage	\$	\$100,000 accident	250	0410	49	5	1	50	239
2. Elevators	A-Bodily Injury	\$	\$100,000 aggregate							
	B-Property Damage	\$	(Agg. app. Div. 4 only)							
3. Independent Contractors	A-Bodily Injury	\$15.80	Coverage B	250	0450	00	5	1	204500.	0514
	B-Property Damage	\$	\$25,000 accident							
4. Products-Comp. Oper.	A-Bodily Injury	\$	\$40,000 aggregate							
	B-Property Damage	\$	(Agg. app. Divs. 1, 3 & 4)							
Premium for Endorsements		\$								
Total Advance Premium		\$4.35	Total B. I. \$ 84.33	Total P. D. \$						

<b>Total Advance Premium</b>	<b>\$6,635</b>
------------------------------	----------------

**Total B. L \$ 84.33**

**Total P. D. \$**

Divisions Description of Hazards	Code No.	Premium Bases	Rates		Advance Premiums	
			Col. A	Col. B	Col. A	Col. B
Division 1. Premises—Operations		(a) Area (Sq. Ft.) (b) Frontage (c) Remuneration	(a) Per 100 Sq. Ft. of Area (b) Per Linear Foot (c) Per \$100 of Remuneration			
SEE SCHEDULE ATTACHED					48.56	
Division 2. Elevators		Number Insured	Per Elevator			
Division 3. Independent Contractors		Cost	Per \$100 of Cost			
CONSTRUCTION OPERATIONS—CONTRACTOR— (NOT RAILROADS) EXCLUDING OPERATIONS ON BOARD SHIPS	0514	204500.	.035		D/P 35.80	
Division 4. Products—Completed Operations		Sales	Per \$1000 of Sales			
Form Numbers of Endorsements forming part of policy at issue			Premiums	\$ 2.36	\$	
4674 (QUARTERLY) L-2594			Premium for Endorsements	\$	\$	
4674 (QUARTERLY) L-2594			Total Advance Premium	\$ 4.56	\$	

Form Numbers of Endorsements forming part of policy at issue

674 (QUARTERLY) L-2418 ~~L-2550 L-2550 S-2200~~

**Page 36**

### Premium for Endorsements

<b>Total Advance Premium</b>	<b>\$ 4.50</b>
------------------------------	----------------

**If Policy Period more than one year: Gross Premium \$**

**Discount \$**

Net Premium \$

**Premium is payable: On effective date of Policy \$**

**1st Anniversary \$**

## 2nd Anniversary \$

Item 4. Location of all premises owned, rented or controlled by named insured **406-408-412 GIBSON ST., ALEXANDRIA, VIRGINIA**  
**AND DISTRICT OF COLUMBIA & MARYLAND**  
Enter name of same location & address stated in Item 1

Enter same if same location & address stated in Law.

**Interest of named insured in such premises:**

**Order****Tennis**

### General Limit:

Part occupied by named insured

**Business of the named insured is**

## ENGINEER-BUILDER

5. During the past three years no insurer has canceled insurance, issued to the named insured, similar to that afforded hereunder, unless otherwise stated herein;

## AVAILABLE

bound volume

## STATEMENT

### ... ADJUSTMENT

# HARTFORD ACCIDENT AND INDEMNITY COMPANY

HARTFORD, CONNECTICUT

19

Policy No. \_\_\_\_\_ Period of Policy \_\_\_\_\_ Period of Audit \_\_\_\_\_

THE UNIVERSITY OF CHICAGO  
CHICAGO, ILLINOIS

*[Illegible handwritten signature]*

Description of Work	State	Class'n	Payroll or Other Exposure	( ) Compensation ( ) Liability		( ) Occupational Disease ( ) Property Damage	
				Rate	Earned Premium	Rate	Earned Premium
1. 1941-1942 2. 1943-1944 3. 1945-1946 4. 1947-1948 5. 1949-1950	1941	1941	17,110.00				
	1942	1942	11,610.00				
	1943	1943	6.00				
	1944	1944	6.00				
	1945	1945	6.00				
Total Exposure							

From Whom Received	Total Earned Premiums	224	00	X	224	00
Source of Audit	Deposit and/or Reported Premiums	224	00		224	00
	Additional Premiums				15	00
	Return Premiums	2	00			
Auditor	NET PREMIUM ADJUSTMENT			ADDITIONAL	15	00
	DATE 5/20 1950			RETURN		

PREMIUMS CALCULATED HEREON ARE SUBJECT TO REVISION AND APPROVAL BY THE HOME OFFICE

**BEST COPY**  
from the original

32 PCS 601755		MICHAEL ADAMS		AUDIT DAILY						
PREVIOUS POLICY NO.				Insured and Address						
CODE GEN. AGT., BR.				L.I.B. 1-2200 2200-100, 6.1 5-10						
CODE AGT., SUB-AGT., OR BROKER		66013- HARRIS & OGDEN, INC.								
POLICY PERIOD:		FROM 8/26/58 TO 8/26/59								
TERM	ENTRY YEAR	COUNT	R-N	INST	AUD. TERM					
5					6					
POL. YR.	STATE	S. I. PREM.	COMM.	LINE	CITY	LIMITS	KE	EXPOSURE	CLASS	P.D. AND COLL. PREM.
		2.64 C	250							13.71
TERM	ENTRY YEAR	COUNT	R-N	INST	AUD. TERM	TYPE		DATE		
5						6				
POL. YR.	STATE	S. I. PREM.	COMM.	LINE	CITY	LIMITS	KE	EXPOSURE	CLASS	P.D. AND COLL. PREM.
45		44.93C	250	0420	-	5	1	0.	Y000	
45		3.63C	250	0410	-	5	1	60.	239	
45		35.80C	250	0430	-	5	1	204500.	0514	
08		5.00	250	0440	-	5	1	0.	9981	
08			250	0440	-	6	2	0.	9981	5.00C
08		9.59	250	0430	-	5	1	19488.	0555	
08		3.67	250	0410	-	5	1	0.	239	
19		12.13	250	0420	-	56	0	5741.	3457	1.34
08		1.75	250	0420	-	56	0	219.	3457	1.72
08		2.90	250	0420	-	56	0	71.	5213	96
08		5.14	250	0420	-	56	0	367.	3470	4.32
19		5.11	250	0420	-	56	0	2214.	5213	3.45
19		.63	250	0420	-	5	1	100.	5057	
45		2.15	250	0420	-	5	1	1162.	5213	
08		19.14	250	0430	-	56	0	68841.	0514	3.68
19		12.20	250	0430	-	56	0	46478.	0514	2.09
08		2.31	250	0420	-	56	0	682.	3447	1.15
		2.64C								13.71

FORM 1-2-60 LIABILITY COATING APPON PRINTED IN U.S.A. 5-55

## STATEMENT OF AUDIT ADJUSTMENT

## HARTFORD ACCIDENT AND INDEMNITY COMPANY

HARTFORD, CONNECTICUT

Policy No. 125 1112 Period of Policy 1/1/59 to 12/31/59 Period of Audit 1/1/59 to 12/31/59

Merrie & Co., Inc. 030231

Description of Work	State	Class'n	Payroll or Other Exposure	( ) Compensation ( ) Liability		( ) Occupational Disease ( ) Property Damage	
				Rate	Earned Premium	Rate	Earned Premium
Construction	MA.	3157	282.00	.232	50		
Construction	MA.	3157	125.00	.235	2 59		
Construction	"	3157	700.00	.231	1 60		
Construction	"	3213	372.00	.230	2 30		
Construction	"	3170	317.00	1.401	5 12		
Construction	MA.	3157	1,712.00	.230	11 62		
Construction	"	3213	2,721.00	.231	5 11		
Construction	"	3037	100.00	.232	1 03		
Construction	MA.	3213	1,142.00	.235	2 15		
Construction	MA.	3157	1,112.00 Gr.	.235	8 53		
Construction Operations	"	0534	51,031.00	.035	17 07		
Construction Operations	MA.	0534	31,457.00	.035	12 20		
Construction	MA.	3157	612.00	.239	2 31	.169	1
Construction	MA.	3157	175.00	.231	3 05	.203	
Construction Operations	MA.	0534	2,802.00	.037	1 07	.020	
Construction	MA.	0535	1,112.00	.218	20 04	.061	min. 13
Construction Contracting	MA.	2129	10,111.00	.231	min. 15 15	.170	min. 8
Construction	MA.	3157	1,000.00	From July 30		.180	
Construction	MA.	3213	571.00			.166	
Construction	MA.	3170	316.00			1.218	1
Construction	MA.	3157	771.00			.168	1
Construction	MA.	3213	2,821.00			.156	3
Total Exposure							

From Whom Received

Total Earned Premiums

302 100 2

Source of Audit

Deposit and/or Reported Premiums

Additional Premiums

Return Premiums

Auditor

NET PREMIUM ADJUSTMENT

ADDITIONAL

RETURN

PREMIUMS CALCULATED HEREON ARE SUBJECT TO REVISION AND APPROVAL BY THE HOME OFFICE

1/2 2nd Rev. Printed in U. S. A.

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from the original

AD. NO. 601755		MICHAEL ABRAMS		AUDIT DAILY																	
PREVIOUS POLICY NO.				Insured and Address																	
CODE GEN. AGT. BR.				LIAB. 1-2000																	
CODE AGT. SUB-AGT. OR BROKER		620154 HARRIS & OBUS, INC.		1-10																	
POLICY PERIOD		FROM 8-26-58 TO 5-27-59																			
TERM	ENTRY YEAR	COUNT	R-N	INST	AUD. TERM																
5																					
POL. TR.	STATE	B. I. PREM.	COMM.	LINE	CITY																
		44.10																			
<table border="1"> <thead> <tr> <th>TERM</th> <th>ENTRY YEAR</th> <th>COUNT</th> <th>R-N</th> <th>INST</th> <th>AUD. TERM</th> <th>TYPE</th> <th>DATE</th> </tr> </thead> <tbody> <tr> <td>5</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>6</td> <td></td> </tr> </tbody> </table>						TERM	ENTRY YEAR	COUNT	R-N	INST	AUD. TERM	TYPE	DATE	5						6	
TERM	ENTRY YEAR	COUNT	R-N	INST	AUD. TERM	TYPE	DATE														
5						6															
POL. TR.	STATE	B. I. PREM.	COMM.	LINE	CITY	UNTS.	KE	EXPOSURE	CLASS	P.D. AND COLL. PREM.											
08		19.29	250	0420	-	5	1	3242.	3457												
08		12.94	250	0420	-	5	1	2702.	5213												
08		.09	250	0420	-	5	1	52.	3429												
08		2.79	250	0420	-	5	1	232.	5057												
08		.32	250	0420	-	5	1	248.	5538												
19		.17	250	0420	-	5	1	2470.	3485												
08		2.89	250	0430	-	5	1	8254.	0514												
08		5.61	250	0430	-	5	1	16040.	0514												
		44.10																			

## STATEMENT OF AUDIT ADJUSTMENT

## HARTFORD ACCIDENT AND INDEMNITY COMPANY

HARTFORD, CONNECTICUT

June 3, 1959

Policy No. 42 MCS 601753 Period of Policy 8-26-58 to 59 Period of Audit 2-25-59 to 5-27-59

Michael Abrams  
639 Sligo Avenue  
Silver Spring, Maryland

Harris and Ogus, Inc. 620134

Description of Work	State	Class'n	Payroll or Other Exposure	( ) Compensation ( ) Liability		( ) Occupational Disease ( ) Property Damage	
				Rate	Earned Premium	Rate	Earned Premium
Carpentry MSC	D.C.	3457	3,242.00	.595	19 29		
Cons. Const.	"	5213	2,702.00	.479	12 94		
Painting	"	3429	52.00	.174	09		
Steel Erection	"	5057	232.00	1.204	2 79		
Sheet Metal	"	5538	248.00	.131	32		
Clerical	Md.	3485	2,470.00	.007	17		
P.E.P. Co.							
All Work Let	D.C.	0514	8,254.00	.035	2 09		
Tollen House							
All Work Let	"	"	16,040.00	.035	5 61		
Total Exposure			8,966.00				
			-24,294.00				

From Whom Received

Total Earned Premiums

44 10

Esta Rubin

Deposit and/or Reported Premiums

Source of Audit

Additional Premiums

44 10

Payrolls &amp; Sub Payments

Return Premiums

Auditor

NET PREMIUM ADJUSTMENT

ADDITIONAL

44

James Doran

Limits 50/100

Dept. \$84.36

RETURN

PREMIUMS CALCULATED HEREON ARE SUBJECT TO REVISION AND APPROVAL BY THE HOME OFFICE

Form PRA-124 2nd Rev. Printed in U. S. A.

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from the original



POL. NO. 6017537		MICHAEL ABRAMS		AUD.						
PREVIOUS POLICY NO.				2nd Address						
CODE GEN. AGT., BR.				LIAB. L-2300						
NAME, AGT., SUB-AGT., OR BROKER		620124		F. & O.						
POLICY PERIOD:		FROM 8/26/58		TO 2/25/59						
TERM	ENTRY YEAR	COUNT	IN	INST	AUD. TERM					
5										
POL. YR.	STATE	R. L. PREM.	COMM.	LINE	CITY	LMTS.	KE	EXPOSURE	CLASS	P.D. AND COLL. PREM.
08		40.64	250	0420	-	5	1	6831.	3457	
45		.22	250	0420	-	5	1	.153.	3457	
19		.12	250	0420	-	5	1	50.	3457	
19		.20	250	0420	-	5	1	2870.	3455	
08		12.07	250	0430	-	5	1	34493.	0514	
45		1.65	250	0430	-	5	1	4712.	0514	
		54.90								

MAR 17 1959  
WASHINGTON

FORM L-2400 LIABILITY CODING AFFON PRINTED IN U.S.A. 5-55

**HARTFORD ACCIDENT AND INDEMNITY COMPANY**

HARTFORD, CONNECTICUT

Nov. 11 1958

Policy No. 2-1-1-62100 Period of Policy 8/30/58 to 12/31/58 Period of Audit 11/26/58 to 2/25/59

W. H. HARRIS & CO.  
 100 WALL STREET  
 NEW YORK, N.Y. 10038

Harris &amp; Oates, Inc. 620134

Description of Work	State	Class'n	Payroll or Other Exposure	( ) Compensation ( ) Liability		( ) Occupational Disease ( ) Property Damage	
				Rate	Earned Premium	Rate	Earned Premium
Carpentry Wks	DC	3157	6,631.00	.595	10 01		
Carpentry Wks	Va.	3157	250.00	.115	22 00		
Carpentry Wks	Wd.	3157	50.00	.252	12 00		
Chemical	"	3185	2,870.00	.057	20 00		
Vehicle Insured Towing Apts.	DC	0514	34,493.00	.035	12 07		
Woodland Apts.	Va.	0514	4,712.00	.035	1 65		
			<u>9,504.00</u>				
			<u>27,205.00</u>				
Total Exposure							

From Whom Received

Harris &amp; Oates

Total Earned Premiums . . . . .

Deposit and/or Reported Premiums . . . . .

Source of Audit

Payroll &amp; Sub Payment

Additional Premiums . . . . .

Return Premiums . . . . .

Auditor

James E. Carter  
J.E.C.

NET PREMIUM ADJUSTMENT . . . . .

11-213 50/100  
1-1-1-100.00

ADDITIONAL

RETURN

PREMIUMS CALCULATED HEREON ARE SUBJECT TO REVISION AND APPROVAL BY THE HOME OFFICE

TERM		ENTRY YEAR	COUNT	R-N		INST	AUD. TERM	SENTINEL ACCOUNT	
POL. YR.	STATE	B. I. PREM.	COMM.	LINE	CITY	LMTS.	KE	EXPOSURE	CLASS 1
20		50.26	250	0420	-	5	1	2447	2451
19		5.60	250	0420	-	5	1	2412	2451
19		.14	250	0420	-	5	1	2070	2451
45		3.90	250	0420	-	5	1	2691	2451
19		23.19	250	0430	-	5	1	66247	0514
06		27.56	250	0430	-	5	1	78741	0514
45		7.97	250	0430	-	5	1	22763	0514
		115.62							

POL. NO. <b>601753 R</b>		MICHAEL ABRAMS		AUDIT DAILY Initial and Address	
GEN. AGT., BR.		OR BROKER <b>620134 HARRIS &amp; OGUS, INC.</b>			
FROM <b>8/26/58</b>		TO <b>11/26/58</b>			
FROM		TO			
YEAR	COUNT	R-N	INST	AND TERM	TYPE
DATE					
POL. YR.	STATE	E. I. PREM.	COMM.	LINE	CITY
LMTS.	KE	EXPOSURE	CLASS	P.D. AND COLL. PREM.	
Empty table body for data entry					

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## STATEMENT OF AUDIT ADJUSTMENT

## HARTFORD ACCIDENT AND INDEMNITY COMPANY

HARTFORD, CONNECTICUT

June 7, 1958

Policy No. 12 100 001753 I Period of Policy 4-25-58 to 5-1-59 Period of Audit 4-25-58 to 11-15-58

Michael Abrams  
600 Illinois Avenue,  
Silver Spring, Md.

Martin and O'Connell, Inc. (2015)

Description of Work	State	Class'n	Payroll or Other Exposure	( ) Compensation ( ) Liability		( ) Occupational Disease ( ) Property Damage	
				Rate	Earned Premium	Rate	Earned Premium
Carpentry SFC	P.C.	3457	6,347.00	.595	50 25		
Carpentry "	ME	"	2,412.00	.232	5 60		
Clerical	"	3445	2,670.00	.007	24		
Carpentry FSC	VS	3457	2,691.00	.145	3 90		
All Work Lot	ME	0514	59,249.00	.035	20 72		
All Work Lot	"	0514	6,998.00	.035	2 45		
All Work Lot	P.C.	0514	78,742.00	.035	27 56		
All Work Lot	VS	0514	22,763.00	.035	7 97		
			<b>C</b>				
			<b>27,620.00</b>				
			<b>27,620.00</b>				
			<b>Total Exposure</b>				

From Whom Received

Total Earned Premiums . . . . .

Total Premium

Deposit and/or Reported Premiums . . . . .

Source of Audit

Additional Premiums . . . . .

Employer Sub payments

Return Premiums . . . . .

Auditor

James Doren

NET PREMIUM ADJUSTMENT . . . . .

WJ/

Write 50/100  
10/30/58

RETURN

PREMIUMS CALCULATED HEREON ARE SUBJECT TO REVISION AND APPROVAL BY THE HOME OFFICE.

Form FRA-124 2nd Rev. Printed in U. S. A.

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from the original

LAW OFFICES  
GALIER, STEWART & CLARKE

1215 NINETEENTH STREET, N. W.

WASHINGTON 36, D. C.

FEDERAL 7-8330

March 5, 1965

RICHARD W. GALIER  
WILLIAM E. STEWART, JR.  
WILLIAM H. CLARKE  
FRANK J. MARTELL  
WILLIAM J. DONNELLY, JR.  
AUSTIN F. CANFIELD, JR.  
HARVEY B. BOLTON, JR.  
JOHN H. VERCHOT  
DAVID P. ORIMARDI

MARYLAND OFFICE:  
4641 MONTGOMERY AVENUE  
BETHESDA 14, MARYLAND

RICHARD W. GALIER  
WILLIAM H. CLARKE  
WILLIAM J. DONNELLY, JR.  
HARVEY B. BOLTON, JR.

Samuel Barker, Esq.  
1001 Connecticut Avenue, N. W.  
Washington, D. C. 20006

Re: Lesmark v. Harris & Ogus, et al.

Dear Mr. Barker:

In accordance with our understanding of March 4th, 1965, wherein the claim of your client, Lesmark, Inc., against my client, Harris & Ogus, Inc., was settled for the sum of \$1500.00, I am enclosing draft in that amount payable to your client and yourself.

Thank you very much for your courtesy and consideration throughout the pendency of this suit.

Very truly yours,

  
Frank J. Martell

FJM:bw  
Enc.

R E L E A S E

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, on or about July 27, 1959, Lesmark, Inc., a corporation, undertook construction of a building located at 1919 Eye Street, N. W., Washington, D. C.; that subsequent thereto, and while so engaged, the owners of property adjacent to said 1919 Eye Street, N. W., claimed injury and damage as the result of the alleged negligent excavation and construction work, and that thereafter as the result of said incidents, suits were filed by said adjoining landowners against said Lesmark, Inc., and other defendants, being Civil Action No. 2364-59, entitled "Isabel C. Fenton v. Walter S. Charron, Marie L. Charron, Lesmark, Inc., a corporation, and Edmund W. Dreyfuss, et al." and Civil Action No. 3506-59, entitled "Robert Ash v. Walter S. Charron, Marie L. Charron, Lesmark, Inc., a corporation, and Edmund Dreyfuss; and

WHEREAS, Lesmark, Inc., a corporation, impleaded Harris & Ogus, Inc., a corporation, as a third party defendant, alleging that said Harris & Ogus, Inc., had failed to secure appropriate insurance coverage to protect Lesmark, Inc. against claims asserted by reason of negligent construction or excavation on property located at 1919 Eye Street, N. W., Washington, D. C., and that said Harris & Ogus, Inc., having advised Lesmark, Inc., that it had secured such proper insurance coverage from its principal, Hartford Accident & Indemnity Company; and

WHEREAS, said Harris & Ogus, Inc., had impleaded said Hartford Accident & Indemnity Company, a corporation, as a fourth party defendant in such civil actions as referred to above, and

WHEREAS, Lesmark, Inc., subsequently impleaded Hartford Accident & Indemnity Company as an additional defendant in the civil actions as referred to above, but that upon motion filed in this Court, said third and fourth party actions by Lesmark, Inc., against Harris & Ogus, Inc., and Hartford Accident & Indemnity Company, were stayed, pending the outcome of the original



actions for damages by plaintiffs Fenton and Ash, in Civil Actions Nos. 2364-59 and 3506-59, as referred to above, and

WHEREAS, judgments were returned against defendants Charron and Lesmark, Inc., in the above-captioned civil actions, which judgments have been paid by defendants Charron, and

WHEREAS, judgment has been entered in the above-captioned cases in favor of defendants Charron against defendant Lesmark, Inc., in the total combined amounts of \$26,872.00, plus costs, and

WHEREAS, the above total sum of \$26,872.00, plus counsel fees, are claimed by Lesmark, Inc., against Harris & Ogus, Inc., and Hartford Accident & Indemnity Company, based on the alleged negligence and breach of contract on the part of the said Harris & Ogus, Inc., and Hartford Accident & Indemnity Company, which alleged negligence and breaches of contract are specifically denied by the aforesaid Harris & Ogus, and Hartford Accident & Indemnity Company, and

WHEREAS, Lesmark, Inc., and Harris & Ogus, Inc., and its successor, Walter Ogus, Inc., are desirous of compromising and settling the disputed claim of Lesmark, Inc., against Harris & Ogus, Inc., and Walter Ogus, Inc. only, but by reason of the fact that said settlement with Harris & Ogus, Inc. and its successor, Walter Ogus, Inc., are not regarded by Lesmark, Inc., to be adequate compensation for all of the injuries and damages allegedly sustained by it, and by reason of the fact that said settlement is being made solely for the purpose of settling disputed claims, Lesmark, Inc., specifically desiring to preserve all claims which it has against Hartford Accident & Indemnity Company, the release of Harris & Ogus, Inc., and of its successor, Walter Ogus, Inc., in no way being intended to release the said Hartford Accident & Indemnity Company from any liability or damages.

NOW, THEREFORE, the said claimant, Lesmark, Inc., in full accord and satisfaction of such disputed claim against the aforesaid Harris & Ogus, Inc., and its successor, Walter Ogus, Inc. only, does hereby acknowledge the

receipt of the sum of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00), paid by the aforesaid Harris & Ogus, Inc., and Walter Ogus, Inc., its successor, and in consideration thereof the said claimant, Lesmark, Inc., does hereby remise, release, and forever discharge the said Harris & Ogus, Inc., and Walter Ogus, Inc., corporations, their successors, and assigns, agents, servants or employees, only, of and from any and all claims, demands, rights and causes of action, of whatsoever kind and nature, arising from and by reason of any and all known and unknown, foreseen and unforeseen injuries and damages, damages to property, and the consequences thereof, which heretofore have been and which hereafter may be sustained by the aforesaid Lesmark, Inc.; the said Lesmark, Inc., specifically reserving, however, all of its claims and rights of action which the said Lesmark, Inc., now has against the aforesaid Hartford Accident & Indemnity Company. Provided, however, that in any cause of action brought against the aforesaid Hartford Accident & Indemnity Company, its agents, servants, or employees, the said Lesmark, Inc., in consideration of the payment of the moneys herein provided, agrees to a reduction of any judgment obtained against Hartford Accident & Indemnity Company, and/or its agents, servants, or employees, in any amount or proportion which the aforesaid Harris & Ogus, Inc., and Walter Ogus, Inc., corporations, may be held to pay by way of contribution or indemnity; and

FURTHERMORE, the aforesaid Lesmark, Inc., does hereby expressly stipulate and agree in consideration of the aforesaid payment to indemnify and hold forever harmless the said Harris & Ogus, Inc., and its successor, Walter Ogus, Inc., corporations, their successors and assigns, agents, servants, and employees, against loss only by reason of any amounts which the said Harris & Ogus, Inc., and Walter Ogus, Inc., corporations, may have become obligated to pay to Hartford Accident & Indemnity Company by way of judgment obtained against it or them, for contribution and/or indemnity, by reason of the aforesaid injury and damage sustained by the aforesaid Lesmark, Inc., a corporation.

IN WITNESS WHEREOF, Lesmark, Inc., by its duly authorized officer,  
has hereunto set its hand and seal this \_\_\_\_ day of March, 1965.

LESMARK, INC.

By Michael M. AbramsTitle President

WITNESSED BY:

Wm. A. Rosen

DISTRICT OF COLUMBIA, SS: )

On this 8th day of March, 1965, before me personally appeared  
Michael M. Abrams, Pres., an officer of LESMARK, INC., a  
corporation, to me known, and acknowledged the release set out on the  
preceding page as his act and deed, after same was read by him, and he then  
and there stated that he fully understood said release and that by his  
signature thereto all matters therein set out are compromised and settled  
in consideration of the payment therein recited.

Josephine L. Porter  
NOTARY PUBLIC, D. C.

My Commission Expires: Dec. 19, 1969

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**[Excerpts from Transcript of Proceedings, before Honorable  
George L. Hart, Jr., U.S. District Court for the District  
of Columbia, January 3, 5-6, 1967]**

[4]

**PROCEEDINGS**

**THE COURT:** I take it that, Mr. Mahoney, that you represent Aetna Casualty.

Mr. Connolly, are you ready for Hartford?

**MR. CONNOLLY:** Yes, Your Honor.

**MR. MARTELL:** I represent Walter Ogus, Inc.

**THE COURT:** Let me see if I can put this case in its proper perspective in my own mind. Now, Judge Tamm made a finding of fact and conclusion of law in a companion case, Ash versus Charron, Civil Action No. 3506-59.

Eleven finds that on July 28, 1959, 1959, at about 7:30 a.m., the defendant, Lesmark, Inc., caused numerous pits or excavations to be dug by hand under both of the said party walls. These pits or excavations were made at points other than where the plans called for footings to be placed along the faces of the party walls and were directly under the two-party walls. No support of any kind was provided by Lesmark, Inc. for the said party walls in connection with these excavations.

Twelve finds pits or excavations under the party walls were in violation of the plans and specifications of the applicable building regulations of the District of Columbia Government. Lesmark, Inc. was negligent in making [5] these excavations and this negligence was the proximate cause of the damage resulting to the buildings.

Thirteen finds that immediately following the making of said pits or excavations on July 28, 1959, cracks began to appear on both party walls and in the front wall of the building of 1917 Eye Street, Northwest. Cracks also appeared in various rooms in both buildings. The District of Columbia Government ordered the contractor, architect and the own-

ers of Lot 29 to take immediate steps for placing concrete in the holes left as a result of said excavations; and so on and so on.

Who owned 1917 Eye Street?

MR. CONNOLLY: Pryce.

THE COURT: Well, the District of Columbia Government ordered the contractor to take immediate steps to correct this, and the damage was limited to property damage. In other words, there was no personal injury involved, as a result of this. And a judgment was entered on November 21, 1962, by Judge Tamm in favor of Isabel Pryce against both Charron and Lesmark for \$21,400 with interest and costs, and judgment was made by Ash against Charron in the sum of \$3,472, with interest and costs.

Now, Aetna Casualty, as insurer of Charron, the owner, have paid these judgments at the amount actually [6] paid and what interest and costs will come to.

MR. CONNOLLY: It was stipulated in the pre-trial, Your Honor - -

THE COURT: Which is what?

MR. CONNOLLY: It was \$25,189.

THE COURT: That's the amount paid by Aetna. The other judgment is in favor of Pryce and Ash against Charron.

Aetna, as insurer of Charron, having paid the judgment makes the following claim against Walter Ogus, Inc., successors to Harris & Ogus, Inc., against Hartford Insurance Company based, as the Court understands it, on the following grounds without any way finding the counts generally as to Ogus. Aetna claims under facts of the case that in view of past dealings between Lesmark and Ogus it becomes the duty of Ogus to obtain policy of insurance with Hartford which would have covered Lesmark for the type of liability that resulted in the judgment in favor of Pryce and Ash, as to Hartford.

Aetna, if such was the duty of Ogus, then Hartford as principal of Ogus, their agent, would be liable to obtain it. That would have covered

Lesmark.

Now, both Hartford and Ogus denies that they never have any such duties. To go further: Even if they were, [7] there was a release signed by Lesmark to Ogus for the consideration of \$1500 which discharged Ogus from any liability to Lesmark, and in turn, of course, discharged Hartford.

Even if the other fact acknowledged by Aetna were true, my understanding of these differs from the pre-trial statements. Do you find any further suggestions that you would like to make with regard to this?

MR. MAHONEY: In the Ash and Pryce cases, there is also a finding of fact by Judge Tamm, and asks for damages for which a judgment was entered on the property. In Charron against Lesmark, Lesmark made in 64 praecipe 5 in the total amount of \$25,000-plus which was entered as satisfied.

THE COURT: Wait a minute. Just a minute. You mean the judgment was satisfied in the Ash and Pryce cases?

MR. MAHONEY: There was also a judgment against Lesmark, Inc. which has not been satisfied.

THE COURT: Just a minute. The praecipe is in the file and is a satisfaction by Charron paid by Aetna.

MR. CONNOLLY: It doesn't show that, but it's stipulated in the pre-trial that Aetna did in fact satisfy these judgments.

I would also like to enter the policy of the [8] insurance between Aetna and Walter Charron for the subrogation agreement.

THE COURT: Any objection to marking that?

MR. CONNOLLY: No, Your Honor.

THE DEPUTY CLERK: Plaintiff's Exhibit No. 1. marked in evidence.

THE COURT: So marked.

(Whereupon, Plaintiff's Exhibit No. 1 marked for identification.)

\* \* \*



[12]

SAMUEL BARKER

was called as a witness for and on behalf of the Plaintiff Aetna and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MAHONEY:

Q. Would you state your full name, please? A. Samuel Barker.

Q. You are an attorney, Mr. Barker? A. Yes, sir.

Q. Were you an attorney of record for Lesmark, Inc. in the Charron and Ash case? A. Yes.

[13] Q. You represented Lesmark, Inc. throughout that litigation? A. Yes, I did.

Q. In response to testimony notes and memos pertaining to pertinent items against Lesmark versus Ogus, by Edgerton to you -- you received a letter dated March 5th, 1965? A. Yes, I did.

Q. May I have what you have there? A. Yes, sir.

Q. Mr. Barker, when did you first advise the attorney representing Charron and Aetna Casualty Company about this proposed settlement with Lesmark, Inc. and Harris & Ogus, Inc.? A. A week or 10 days before the actual settlement was consummated.

Q. When was the release actually signed, do you know what date? A. I don't see it here -- well, I assume the release carries the correct date of execution. I have a copy of my letter from Mr. Edgerton on March 5 -- of my letter to Mr. Edgerton dated March 8th, 1965 -- it was received March 8, 1965.

Q. And that was in response to the letter to you? A. Let me finish. There was a postscript typed to [14] Mr. Martell in which it says: "Dear Mr. Martell: I am enclosing herewith a release which has been duly executed by Lesmark."

That letter was from Mr. Justin Edgerton. When I actually executed, it, I really don't know.

Q. When did you first notify Mr. Edgerton of this? A. I was talk-

ing with Mr. Edgerton several weeks before the settlement and told him we had just about come to a conclusion on this.

THE COURT: Now, you say -- would you say that would be one week before, or several weeks?

THE WITNESS: I think it's closer to two weeks, Your Honor.

THE COURT: By the way, whom did Mr. Edgerton represent?

MR. MAHONEY: Aetna.

BY MR. MAHONEY:

Q. Did you do this by telephone? A. Yes.

Q. Did you not receive a letter from them in regard to this proposed settlement? A. Yes, I did.

Q. What was the date of that letter? A. [15] I assume it's the one you referred to of the date of March 5th, 1965. Now, I answered that letter and pointed out that I had received that letter on March 8th, 1965.

Q. And as -- at that time you forwarded the lease to Mr. Martell?

THE COURT: That was March 5th and March 8th of what year?

THE WITNESS: 1965.

BY MR. MAHONEY:

Q. And it was after that time that you forwarded the lease to Mr. Martell? A. That's right, at least according to my records here.

MR. MAHONEY: If Your Honor please, I have a copy of this letter, and if there is no objection, I would like to introduce it in evidence.

THE COURT: Which letter is that?

MR. MAHONEY: From Mr. Edgerton to both Mr. Barker and Martell, dated March 5th, 1965.

THE COURT: Do you have any objections?

MR. MARTELL: The letter had a return receipt requested but I didn't get mine.

THE COURT: Does it have a receipt on the letter, [16] Mr. Mahoney?

MR. MAHONEY: Yes, it is attached to the letter. There is a reg-

istered receipt, and I would like to have it entered as Aetna's Exhibit No. 3.

(Whereupon, Aetna's Exhibit No. 3 was marked for identification.)

THE COURT: Of course, these receipts show both Mr. Martell and Mr. Barker received them on March 8th, 1965.

MR. MAHONEY: I would like to offer in evidence a copy of the March 10th, 1965 letter in which Mr. Barker testified that there was a postscript in which it states that the release had been duly executed by Lesmark.

THE COURT: Is there any objection, Mr. Connolly?

MR. CONNOLLY: It would be to enter the release.

THE COURT: This doesn't prove any execution -- it would not prove any execution at all.

MR. CONNOLLY: I have never seen it.

THE COURT: We will mark it Aetna's No. 4 for identification.

(Whereupon, Aetna's Exhibit No. 4 marked for identification).

BY MR. MAHONEY:

Q. Mr. Barker, did a praecipe accompany the release? A. My recollection is that it did not, because I have [17] a letter here of March 18th, 1965 in which it says: "I return herewith praecipe and copy which I sign on behalf of Lesmark, Inc." This was addressed to Mr. Martell and a copy was sent to Mr. Edgerton.

MR. MAHONEY: May this letter be marked as Plaintiff's Exhibit No. 5.

THE COURT: It may be marked Aetna's Exhibit No. 5.

MR. CONNOLLY: May I see that, please, Your Honor.

(Whereupon, Mr. Connolly examined the letter.)

(Whereupon, Aetna's Exhibit No. 5 was marked for identification.)

THE COURT: The praecipe must be in the file, isn't it? Let us see if we can find it.

BY MR. MAHONEY:

Q. Do you know if the praecipe you referred to was filed? A. No, I sent it to Mr. Martell. It would be sometime after the 18th. I don't know.

THE COURT: I do not find it entered on the jacket.

Mr. Martell, did you ever file that praecipe?

MR. MARTELL: I don't know, Your Honor; I assumed it had been filed.

I don't think it was required in 2364-59.

[18] THE WITNESS: I may have a copy in my file.

THE COURT: Let us see if there is a copy of the praecipe in Mr. Barker's file. His file is over there where you left it.

MR. MARTELL: This is an undated praecipe.

THE WITNESS: Yes, and it has both civil action numbers on it.

THE COURT: Both civil action numbers on it?

THE WITNESS: Yes, sir.

THE COURT: You mean 2364-59 and 3506-59 -- it does not appear that the praecipos were ever filed. Just for whatever it's worth, attach that praecipe to Exhibit No. 5 and have it marked 5-A.

(Whereupon, Aetna's Exhibit No. 5-A was marked for identification.)

THE COURT: Five and 5-A may both be admitted. What is the date of that?

THE DEPUTY CLERK: March 18th, 1965.

(Whereupon, Aetna's Exhibits Nos. 5 and 5-A were received in evidence.)

BY MR. MAHONEY:

Q. Now, Mr. Barker, did you, subsequent to your letter of March 18th, 1965 receive a check for \$1500? [19] A. Yes.

Q. What was the date of that? A. There is a memo in my files dated March 15th, 1965, showing that it was sent to Lesmark on March 15th, so that was probably the date I received the check. I may have received it before that, but that's when I sent it to Mr. Abrams for endorsement.

Q. And that is from the memo in your files? A. Yes, sir.

Q. Was the check accompanied by a letter? A. I assume so. The endorsement as indicated and returned to me.

Q. From whom did you receive the check? A. Mr. Martell.

Q. Do you know whether the check was deposited and cashed? A. Yes, I am sure it was.

Q. And that was subsequent to March 15th? A. I assume so.

THE COURT: Yes, this praecipe was filed here in both civil actions on March 29th, 1965, and that is the praecipe referred to in Mr. Barker's letter of March 18th, 1965. Aetna's Exhibit 5 and 5-A. The praecipe is signed by [20] Mr. Barker and Mr. Martell for Harris & Ogus.

MR. MAHONEY: If Your Honor please, I have nothing further of this witness. But I would like the record to show, to make it formal, that formal tenure of consideration of \$1500 draft from Aetna was issued to Walter Ogus, Inc.

THE COURT: You are referring to the draft of \$1500 representing a settlement figure that Ogus paid Lesmark -- on behalf of Aetna to Ogus, is that correct?

MR. MAHONEY: Yes, Your Honor.

THE COURT: Mr. Martell?

MR. MARTELL: I never paid; Aetna paid \$1500.

THE COURT: I guess the next order of business will be your, Mr. Martell.

#### CROSS EXAMINATION

BY MR. MARTELL:

Q. I believe it was settled on March 4th -- do you remember being in my office on March 4th --

MR. CONNOLLY: Let the record show that March 4th was a Thursday and March 5th was a Friday.

BY MR. MARTELL:

Q. Do you remember being in my office and picking up those releases on March 4th -- we had briefly discussed settlement in this case because of the trial then pending, [21] and I believe it was on the 5th --

A. It was pending.

Q. Why did you settle the case?

MR. MAHONEY: I don't believe it is an important issue in this case.

THE WITNESS: Why don't you ask me, then?

THE COURT: I will sustain the objection.

BY MR. MARTELL:

Q. Do you have a letter from me dated March 5th?

THE COURT: Is that 1965?

MR. MARTELL: Yes, Your Honor.

I would like to have this marked as Defendant Ogus' Exhibit No. 1 for identification.

THE COURT: Are there any objections?

MR. MAHONEY: No, Your Honor.

(Whereupon, Defendant Ogus' Exhibit No. 1 was marked for identification.)

MR. CONNOLLY: What was the date of that?

MR. MARTELL: March 5th, 1965.

BY MR. MARTELL:

Q. I am showing you what has been marked Ogus Exhibit No. 1 for identification. Will you look at that and tell [22] me whether or not in fact you got this draft for \$1500? A. Your letter is dated March 5th, enclosing the draft and I assume we received it within the next day or two.

MR. MARTELL: Would you have this marked as Ogus' Exhibit No. 2 for identification.

THE COURT: What is that? The release.

MR. MARTELL: Yes, Your Honor.

THE COURT: Any objections?



MR. MAHONEY: No, Your Honor.

(Whereupon, Ogus' Exhibit No. 2 was marked for identification.)

BY MR. MARTELL:

Q. I show you what has been marked Defendant's Exhibit No. 2 for identification, Mr. Barker, which is the release as executed by Lesmark. Would you look at that, sir? What is the date of that? A. March the 8th, 1965.

MR. MARTELL: I have nothing further of this witness, Your Honor.

\* \* \*

BY MR. CONNOLLY:

Q. Mr. Barker, in his opening statement to the Court, Mr. Mahoney stated that there were judgments in favor of [23] Charron to Lesmark in 1964. A. That's right.

Q. Can you tell us what efforts were made, either by Charron or Aetna, subsequent to May 8th, 1964? That is, to have executed or corrected the judgment against Lesmark? A. I don't know.

THE COURT: What was the date the judgment was made?

MR. CONNOLLY: May 8th, 1964.

BY MR. CONNOLLY:

Q. Tell us what efforts Aetna, or Charron made to correct or execute that judgment.

THE COURT: Do you still object?

MR. MAHONEY: I object. I do not think it's material.

THE COURT: All he will testify is to the efforts that were made. He can testify to that. Is there anything that you know about it?

THE WITNESS: I know nothing. There was no attachment, no notice of disposition, no request or any conversation.

BY MR. CONNOLLY:

Q. And you received no attachment and were unaware of any garnishment that may have been issued?

[24] THE COURT: On what date?

MR. CONNOLLY: Up until the present time.

THE COURT: You mean Charron against Lesmark on May 8th, 1964? I don't think that is right.

BY MR. CONNOLLY:

Q. Mr. Barker, were you acting as attorney for Lesmark in that matter and in matters generally during this period of time? A. Yes, sir.

Q. Were you aware of the financial condition of Lesmark subsequent to May 8, 1964, until March 4 or 5, 1965? A. Somewhat.

Q. Do you know of any other judgments against Lesmark? A. I didn't know then.

Q. Were there any judgments that had existed prior to the date of May 8th, 1964? A. I don't recall.

Q. Were you sufficiently well acquainted with the financial affairs of Lesmark to know whether or not Lesmark would have paid all or any part of a judgment against Lesmark? A. Well, my impression is that they could not have paid all of the judgment, but they had some funds to pay some of it. I was somewhat concerned, but I heard from no [25] one and did nothing to encourage it.

MR. MAHONEY: During this period of time from May 8th, 1964 to the present time, you knew that there was a garnishment proceeding and you were assigned to prosecute a third party case against Harris & Ogus?

THE WITNESS: Yes.

\* \* \*

[28]

HAROLD FEINMAN

was called as a witness, first having duly sworn, and testified as follows:

#### DIRECT EXAMINATION

BY MR. MAHONEY:

Q. What is your occupation? A. Insurance underwriter and salesman.

Q. By whom are you employed? A. Walter Ogus, Incorporated.

Q. Do you have a title? A. Vice President.

Q. How long have you been Vice President? A. For the past three or four years.

Q. Were you also Vice President of Harris & Ogus, Inc.? A. Yes.

Q. Were you Vice President of Ogus in 1959? A. Yes, I was.

Q. Do you have the insurance coverage -- the notes and records, et cetera, of the insurance company of 1959, do you have these records with you? A. Yes.

THE COURT: Have you seen all that material, Mr. Connolly?

[29] MR. CONNOLLY: No, I have not, Your Honor. I was going to ask the Court.

THE COURT: Well, we may as well recess to 1:45. Let the other counsel see those, if you will.

\* \* \*

[30] BY MR. MAHONEY:

Q. Now, Mr. Feinman, how long have you been engaged in the insurance business? A. About 14 years.

Q. How long have you been engaged with Harris & Ogus, Inc.? Or Walter Ogus, Inc.? A. It will be 13 years.

Q. What is the difference between a broker --

MR. CONNOLLY: I object to that, sir. \* \* \*

THE COURT: Well, he will have his ideas and I am sure he's referring to insurance, and of course any legal [31] opinion he may give may not be binding upon the Court, but we don't have a jury here, and I will hear what he has to say.

BY MR. MAHONEY:

Q. Will you tell us, sir? A. Well, an agent is a representative and acts on behalf of the insurance company, which is binding insurance on whatever is in the insurance policy, and the broker more or less represents the assured. He has no authority in respect to the insurance company.

Q. And what is your description of --

MR. CONNOLLY: I move that that be stricken. I think that calls for a legal conclusion.

THE COURT: Well, I will permit it for whatever it's worth.

BY MR. MAHONEY:

Q. Well, what is your relationship with Hartford Indemnity Insurance Company?

MR. CONNOLLY: Your Honor, I don't think he has established that this man has any relationship with Hartford Accident and Indemnity Company. If you're talking about Harris & Ogus, or Walter Ogus, the best evidence of the relationship would be written agreement which would exist between the two of them, a copy of which Mr. Feinman has in [32] his files. I object to that. He hasn't laid a foundation.

THE COURT: Well, lay a foundation for it.

BY MR. MAHONEY:

Q. Now, when I refer to you, Mr. Feinman, and when I refer to you I mean as representing Walter Ogus, Inc. What is the relationship between Walter Ogus, Inc. and Hartford Accident Indemnity Insurance Company? If there's an agreement in writing, do you have a copy?

THE COURT: What do you think is the relationship with Walter Ogus Agency and Hartford Insurance Company? Do you have a written contract?

THE WITNESS: Yes, I do.

THE COURT: Well, was it in existence at the beginning of the year 1959?

THE WITNESS: Yes, it was.

BY MR. MAHONEY:

Q. Well --

THE COURT: Well, let us see what it is. What have you got there?

MR. MAHONEY: I have a photostat of the agency agreement, consisting of five pages, Your Honor.

THE COURT: And the date is what?

MR. MAHONEY: The first day of April, 1957.

[33] THE COURT: All right. Suppose we mark that as the next number for identification, and then show it to Mr. Connolly and Mr. Martell.

(Whereupon, Aetna's Exhibit No. 6 was marked for identification.)

THE COURT: How many pages was that?

THE DEPUTY CLERK: Five, Your Honor. I will staple it together.

\* \* \*

MR. MAHONEY: I would like to offer this in evidence, Your Honor.

THE COURT: Any objection?

MR. CONNOLLY: No objections.

(Whereupon, Aetna's Exhibit No. 6 was received in evidence.)

BY MR. MAHONEY:

Q. And this agency agreement, is it comprised of the agreement you had with Hartford Accident Indemnity Insurance Company that has been admitted in evidence? A. I believe, we have another agreement today, and I believe that agreement is between Harris & Ogus and Hartford, [34] and no longer exists.

MR. CONNOLLY: We can have a stipulation, Mr. Mahoney, if you like, that this is the agreement in effect at the time these matters occurred.

MR. MAHONEY: Thank you.

BY MR. MAHONEY:

Q. Now, in the body of this agreement, in Paragraph 1, there is reference to the word "binders," and can you tell us what a "binder" was, or what it means to bind, or how was that done. A. A binder is indicating that there is coverage for a specific thing that an insured wants and we can bind the company as to specific coverage by the agency agreement.

Q. As a practical matter, how is that done?

\* \* \*

[36] A. Normally it is binded through a memorandum to an insurance

company, or perhaps orally through a telephone conversation, but it is normally done through a written memorandum.

Q. Is normally done -- in other words, there is a memo following a telephone conversation? A. Normally it is done that way.

Q. But you can bind something simply by saying you are bound to the policy? A. As an agent of the company, it is my understanding.

[37] MR. CONNOLLY: I don't think that is what the contract says.

THE COURT: Well, what does the contract say differently, Mr. Connolly, except to those parts of insurance -- you mean, for example, if you buy a new automobile, you can call up and change it and bind a new automobile by telephone?

MR. CONNOLLY: The point is: Perhaps in your situation the agent with which you had the telephone conversation has some specific authority grant from the insurance company with whom he then put the business. This agreement specifies that they can issue binders under which the company from time to time may authorize to be issued and delivered.

THE COURT: It seems to be the type of thing covered in Exhibit A.

\* \* \*

[40] BY MR. MAHONEY:

Q. Do you have a right to issue binders? To issue binders to manufacturers and contractors for liability policies? A. Yes, sir.

Q. Mr. Feinman, when did you first have business dealings with Mr. Abrams, or Lesmark, Inc.? A. About 1957.

Q. And didn't Mr. Abrams at that time have a manufacturers and contractors liability policy in force? A. Yes, he did.

Q. And with what company? [41] A. Hartford Accident Indemnity Company.

THE COURT: Who is Mr. Abrams?

MR. MAHONEY: President of Lesmark, Inc.

THE COURT: Could we talk about Lesmark?



MR. MAHONEY: Well, he was dealing with an individual and only a specific individual.

THE COURT: Well, from 1957 you dealt with Mr. Abrams for Lesmark, is that right?

THE WITNESS: There was no Lesmark, Inc. in 1957.

BY MR. MAHONEY:

Q. He was acting in another capacity? A. He was working for Michael Abrams.

Q. What was his business? A. General contractor.

Q. Since you have known him, has he been in the contracting business? A. As long as I have known him he has been a general contractor.

Q. Did you from time to time advise him as to his insurance needs? A. Yes, we did.

Q. How did you go about doing this? A. By seeing him and discussing what --

[42] THE COURT: Before you get into this, I would be interested to know where Lesmark gets in this thing?

MR. MAHONEY: Mr. Abrams was President of Lesmark, Inc.

THE COURT: When was Lesmark, Inc. founded?

THE WITNESS: In February 1959.

THE COURT: In February of '59 Lesmark was founded. Thereafter did you deal with Abrams for Lesmark, Inc.?

THE WITNESS: Yes, I did.

\* \* \*

BY MR. MAHONEY:

Q. Now, I am not sure you answered the question. I asked you if you had advised him as to his insurance need, and I asked you how you went about this. A. By seeing him with reference to his insurance needs.

Q. Now, would he tell you what he was doing and you tell him what was needed? A. Yes, sir.

Q. Now, in February of 1959 did Mr. Abrams request property

damage coverage added to his basic property? A. Yes, he did.

\* \* \*

[43] Q. Mr. Abrams, do you have in your file a copy of the policy, 42 MCS 601753, with the endorsement?

THE COURT: Now, this is Exhibit 2, is that correct?

MR. MAHONEY: This is the same policy. This is Plaintiff's Exhibit No. 2, Your Honor.

THE COURT: Plaintiff's Exhibit No. 2 is not complete, is that right?

MR. MAHONEY: That's right.

MR. CONNOLLY: That is 42 MCS 601753?

MR. MAHONEY: Yes, that is.

BY MR. MAHONEY:

Q. Is what you handed me the policy with the endorsement? A. This is not the policy.

Q. What is this? [44] A. This is the daily report.

Q. Does this contain the endorsement? A. Copies of the original endorsement.

Q. Where are the originals? A. The originals we sent to the assured.

Q. Does Hartford, the company, keep a copy of this? A. Hartford keeps a copy and sends the original to us, and we keep a copy and send the original on to the assured.

Q. Well, what you have handed me is what your office has with respect to the coverage under this particular policy issued to Abrams or Lesmark, Inc. with the endorsement attached? A. That's right.

Q. And what is the effective date of this? A. The original date?

Q. Yes. A. August 26th, 1958.

Q. And when did it end? A. August 26, 1959.

Q. So this policy was in effect at the time of the accident we are talking about today?

THE COURT: Well, that is the original policy which provides only

personal liability, which is Aetna's [45] Exhibit No. 2, is that correct?

MR. MAHONEY: No, it contains the endorsement.

THE COURT: Maybe it does, and maybe it doesn't. Now, Exhibit 2 is limited to personal liability to Abrams, nothing more as far as I can see. Now, how does it get into Lesmark, and how do we get property on it?

\* \* \*

MR. CONNOLLY: May I be heard, please, Your Honor. I think if I could have a chance to voir dire this witness I can straighten these things out.

THE COURT: If Mr. Mahoney has no objection.

MR. MAHONEY: No, Your Honor.

VOIR DIRE EXAMINATION

BY MR. CONNOLLY:

Q. Now, Mr. Feinman, the document that I am holding [46] here with the attachment on the back; this is what you call your daily, is that right? A. That's true.

Q. Now, there are two pages on the back. The two pages on the back are not a part of the policy, they are the oral statement, is that right?

So, if we take these off we will not be destroying the policy? Would you mind removing these two pieces.

\* \* \*

Q. Now, this part is the daily, is it not? A. That is true.

[47] Q. Now, in order to find out what hazards are covered you would have to have a description of the hazards, would you not? A. Yes, we would.

Q. And I want to ask you if this is the description of the hazards? A. Yes, it is.

THE COURT: Mark this first document 2-A and the second document 2-B.

BY MR. CONNOLLY:

Q. Now, from time to time endorsements were issued, were they not? A. Yes, they were.

Q. Now, I show you these two pieces of paper and ask you if they are not Endorsements 1, 2, 3, 4 and 5? A. Yes, they are.

THE COURT: Let these papers be 2-C. That will be, the five endorsements will be 2-C and put a staple in them.

THE DEPUTY CLERK: I am taking the label off the one marked 2-A.

BY MR. CONNOLLY:

Q. In your file, Endorsement No. 6, the effective [48] date is June 11th, 1959? A. All right.

Q. Do you have endorsement No. 7? A. I have now.

MR. CONNOLLY: Will you give these the next two numbers.

THE COURT: That would be No. 2-D and 2-E.

(Whereupon, Aetna's Exhibits 2-B, C, D and E were marked for identification.)

\* \* \*

BY MR. CONNOLLY:

Q. \*\*\* And the documents which I have just identified are the insurance agreements, is that right? [49] A. Yes.

Q. And in answer to His Honor's question, the one in which Michael Abrams came in, in directing your attention to Endorsement No. 2, the effective date of July 17, 1959, and the effective date of February 11th, 1959, changing the name to read Lesmark, Inc. A. That's correct.

THE COURT: What was that change?

MR. CONNOLLY: July 15th, 1959, and dated February 11th, 1959. It was dated back, in other words.

THE COURT: What exhibit is that?

MR. CONNOLLY: Your Honor, that is 2-C. And I would suggest, Your Honor, that in order to make this intelligent we could modify the

record to have the daily -- to have this whole package made one number. In other words, the daily would be one number; the description of hazards would be that number, plus an A; and each endorsement having separate letters, and we would have five endorsements under 2-C.

THE COURT: Well, we will make those endorsements 2-C-1, 2, 3, 4, and 5. Are you through now?

MR. CONNOLLY: Yes, Your Honor.

\* \* \*

[51] DIRECT EXAMINATION (Continued)

BY MR. MAHONEY:

Q. Well, the policy was then changed to the name of Lesmark, Inc. on February 11th, 1959? A. That's correct.

Q. On or about that time did Mr. Abrams discuss with you a job that he was doing for PEPCO?

\* \* \*

THE WITNESS: He came in to discuss it with us, yes.

BY MR. MAHONEY:

Q. Did you see the specifications of the contract? A. No, I did not.

Q. Did he tell you about the specifications? A. No, he did not.

Q. Did he tell you what he was going to do? A. No, he did not.

[52] Q. Did he ask you for advice? A. He always asked for advice.

Q. Well, did you get the information by asking him? A. All he asked, sir, was for insurance in order to do the work.

Q. Well, in order for you to do that, you would have to know for what you were certified? A. We would have to know, yes.

Q. Well, you certified what? What kind of insurance did he have? A. One hundred - three hundred bodily injury. The certificate here would indicate that was certified as to coverage.

Q. Which would indicate what? A. It indicated that for the bodily injury he had 100-300 bodily injury, and 100,000 property damage.

Q. Did he have contractual liability? A. Well, it included completed operations.

THE COURT: What is that, performance?

MR. MAHONEY: That is several particular coverages for different jobs.

THE WITNESS: He had contractual liability.

THE COURT: What does that mean by contractual [53] liability?

\* \* \*

THE WITNESS: The contractual contract is the agreement made between the two parties in which we ascertain [54] what the insurance coverage would be. It is a typical agreement made between the two parties involved. In this case PEPCO was the specific contractual agreement.

THE COURT: You insured both Lesmark and PEPCO?

THE WITNESS: We insured Lesmark. We insured the specific contractor's agreement made between Lesmark and PEPCO.

\* \* \*

[55] BY MR. MAHONEY:

Q. Under that certificate, was excavation covered and afforded?

A. This certificate does not indicate any excavation coverage.

Q. What about the contractual liability? [56] A. I do not have a copy of the contractual liability.

Q. But you are not stating that a contractual liability coverage could exclude excavation? A. No, sir, it has never made any mention of excavation.

Q. Now, when was that certificate issued? A. February 11th, 1959.

Q. Now, did there come a time when Mr. Abrams requested a certificate of insurance? A. He had other jobs which --

Q. And when was the next job -- I'm not sure that Mr. Connolly has this marked. It is a certificate of insurance.

THE COURT: A certificate for what?



MR. MAHONEY: The PEPCO job.

THE COURT: Well, so far there hasn't been anything that has come up in the PEPCO job that I think is in the slightest way germane in this case.

MR. MAHONEY: Well, in this certificate it says that Lesmark, Inc. has property damage liability coverage.

THE COURT: That doesn't say that it covers excavation.

MR. MAHONEY: No, sir.

THE COURT: Well, until it does, it doesn't mean anything to me.

[57] MR. MAHONEY: May this be marked Plaintiff's Exhibit No. 7?

THE COURT: Yes, for identification.

(Whereupon, Aetna's Exhibit No. 7 was marked for identification.)

BY MR. MAHONEY:

Q. When was the next job you were asked or requested to provide insurance for Mr. Abrams and Lesmark, Inc.? It would be Lesmark, Inc. now, wouldn't it? A. It would be Lesmark, Inc.

I don't know exactly what the next job was. We had requests for other certificates of insurance, but specifically as to when these jobs were, I don't know.

Q. When was the next one you had there? A. June 18, 1959.

Q. And what job was that for? A. Well, one was for Dixie Janitor the supply warehouse.

Q. May I have that? A. Yes.

Q. Were these certificates issued indicating what insurance Lesmark, Inc. had at the time?

[58] MR. CONNOLLY: For that one job.

MR. MAHONEY: Yes.

MR. CONNOLLY: There were certificates.

THE COURT: Well, mark them the next numbers for identification.

(Whereupon, Aetna's Exhibits Nos. 8 and 9 marked for identification.)

BY MR. MAHONEY:

Q. Both these exhibits indicate that Lesmark, Inc. had in force a manufacturers and contractual liability policy with property damage liability in the amount of \$100,000 effective from 8-26-58 and expiring 8-26-59.

THE COURT: Well, that's all very interesting, but it is not germane unless you can show that it included damage by excavation.

MR. MAHONEY: My whole point, Your Honor, is that this should be pointed out if there is some difference in property damage liability and property damage liability caused by excavation.

THE COURT: Are there any further certificates?

THE WITNESS: One to Rockville Fire Department.

BY MR. MAHONEY:

Q. And does that indicate the same coverage which [59] indicates bodily injury and the \$100,000 property damage? A. Yes.

Q. When was that certificate issued? A. June 18th, '59.

THE COURT: Let me see that.

THE COURT (Speaking to the witness): Would the policy issued in each of those cases be the same policy as the one issued to Michael Abrams which we have been previously talking about, that would be 42 MCS 601753. Exhibit 2 refers only to bodily injury, but there is a provision for property damage liability. Would those that you have talked about be the same policy?

THE WITNESS: They would.

THE COURT: In other words, they would be the same as this issued, as 42 MCS 601753, except that they covered both property damage and bodily injury; whereas, Exhibit 2 only covers bodily injury, is that correct?

THE WITNESS: That's correct.

BY MR. MAHONEY:

Q. And these various certificates stated that property damage was in effect and specified at that time they weren't limited to any particu-

lar job, were they?

MR. CONNOLLY: They speak for themselves, Your [60] Honor.

(Whereupon, Plaintiff Aetna's Exhibit No. 10 was marked for identification.)

BY MR. MAHONEY:

Q. Description of the locations in Virginia, Maryland and the District of Columbia? A. Well, they would be certificates issued for just a specific individual job to show that these limits are existing.

Q. The purpose of the certificate is to insure the owner that the person who is doing the work for him is adequately covered? A. Whoever the certificate is issued to, these limits are shown in the certificate, and are part and parcel of the policy.

THE COURT: Does it say that they have these limits under a policy that is similar to Exhibit 2?

THE WITNESS: Well, according to our records these certificates did exist at the time we issued the certificate.

THE COURT: Well, it's the same policy.

MR. MAHONEY: It certified property damage in effect.

THE COURT: Yes, now I understand.

[61] BY MR. MAHONEY:

Q. Now, Mr. Feinman, when the Eye Street job was discussed between you and Mr. Abrams -- A. I don't recall discussing the Eye Street job.

Q. Do you know that at some time it was discussed? A. I only know that it was discussed when I see a certificate. I don't recall personally discussing it with Mr. Abrams.

Q. Are you sure that Mr. Abrams did discuss this job with you?

Well, I will refer you to your deposition taken on November 25, 1964, at page 51, and I am going to ask you certain questions that were asked you; and ask you whether you made certain answers:

"Q. With respect to any operation conducted on Eye Street, did Abrams ask you to get such insurance as he might need?

"A. Within limits we were getting him -- specifically we had an endorsement.

"Q. What do you mean by that, you were getting an endorsement?"

THE COURT: Wait a minute. You are trying to impeach this witness, and that doesn't impeach him.

[62] MR. MAHONEY: Well, the answer is ambiguous. That's why I want to go on.

BY MR. MAHONEY: (Reading)

"Q. Did you undertake to advise him that he needed a certain kind of insurance and leave it to him to make his own judgment, or did he leave it to you to provide such insurance as he might need?

"A. He would supply us with the job he was going to do and we would indicate the insurance that he would get.

"Q. Did he advise you of the job that was being done in the 1900 block of Eye Street?

"A. I can't specifically recall the job. I am sure he did. But the specific instances, I cannot give you any."

MR. CONNOLLY: I think that's supposed to stop, because the next question is: "Did you know he was undertaking to do some excavation up there?" And the answer is: "No, I did not know he was doing excavation."

THE COURT: Well, it doesn't impeach him, certainly.

BY MR. MAHONEY:

Q. Did you know that Mr. Abrams was going to do the construction work on 19th Street, or about to do the job then? [63] A. Again, I don't recall any instance personally, other than a normal insurance operation.

Q. But heretofore when he had a job, you and he would get together and discuss what insurance was needed? A. Not necessarily. We had qualified officers who might talk to him. Anybody in the office could take out the certificate. It needn't have been me personally.

Q. But you have talked to him personally on many occasions? A.

I have.

Q. And did you talk to him with respect to the certificates which were issued that we have just discussed? A. I don't recall talking specifically about any certificates.

Q. Who else handles his accounts? A. Pat Taylor.

Q. Well, she was the secretary. A. At that time she was insurance underwriter.

Q. Did you ever advise Mr. Abrams that in order to be fully protected in these jobs he should have excavation coverage? A. No, I was not aware of the fact that he did excavation.

[64] Q. Did you know at the start of the operation? Did you know he did some excavating? A. No.

Q. Did you ask him? A. I don't recall asking him.

Q. But on one of these jobs for which you issued certificates, did you recommend that he carry excavation coverage? A. Based on his previous coverage I assumed that he did the same operations, and there was no excavation included.

Q. When he changed from Abrams to Lesmark, Inc. in 1959, did you know he increased his operations? A. I did not know he increased them as of February '59.

Q. Was any of the excavation coverage provided on any other jobs he did between February '59 and June '59? A. We never provided any excavation.

Q. And you never told him he needed it? A. He never told us that he was doing any excavation.

\* \* \*

[66] CROSS EXAMINATION

BY MR. CONNOLLY:

Q. Mr. Abrams first took out this MCS policy in 1957, is that not so? A. According to the records, yes.

Q. And when the policy was taken out you included part of the pol-

icy and submitted to Hartford the definition of the hazards. Is that not right? A. That's correct.

Q. I am told by the Clerk that Plaintiff's 2-A, 2-B and 2-C-1, 2, 3, 4 and 5, 2-D and 2-E have just been marked for identification. I thought these were the ones we marked to identify the policy, and I would like to offer them in evidence.

THE COURT: Any objection, Mr. Mahoney.

MR. MAHONEY: No objection.

THE COURT: They may be admitted.

(Whereupon, Aetna's Exhibits 2-A, 2-B, 2-C, 2-C-1, 2, 3, 4 and 5, 2-D and 2-E were received in evidence.)

THE COURT: Mr. Connolly, when you were talking about the MCS policy in 1957, that is Aetna's Exhibit 2, is it not?

[67] MR. CONNOLLY: Yes, Your Honor. That is the policy in question.

BY MR. CONNOLLY:

Q. Now, in the description of hazards, that is what is set forth in Plaintiff's Exhibit D, is it not? A. That's right.

Q. Where did you get that information as set forth in that description of hazards? A. Well, I believe these were renewed from the previous policy. We assumed them -- the operations to be the same.

Q. Well, at some point you had to get the information from Mr. Abrams, did you not? A. That's right.

Q. Well, when the policy was first issued, clearly it did not provide for property damage liability at all, is that no so? A. That's correct.

Q. And the original daily, which is Plaintiff's 2-A shows no premium was ever charged for, or collected for property damage liability? A. Right.

Q. Isn't it a fact that subsequent to 1957 and before the losses occurred in this case, namely, on July 28th, 1959, [68] you on several occasions have attempted to sell property damage liability to Mr. Abrams



and he turned you down? A. That's correct.

THE COURT: What was the date?

MR. CONNOLLY: On several occasions between 1957 and the date of the loss in this case, which was July 28th, 1959.

BY MR. CONNOLLY:

Q. On page 21 of your deposition, was this question asked of you:

"Q. How was it, if you know, that Mr. Abrams did not have property damage coverage under this manufacturers' and contractors' liability coverage up to this time?

"A. I had attempted to sell Mr. Abrams property damage since 1957 and he did not wish to purchase same."

MR. MAHONEY: I object, Your Honor. The date that Mr. Connolly used was 1957 to July 1959.

THE COURT: I was going to ask Mr. Connolly a question. It says "on this date." I don't know what this date is.

BY MR. CONNOLLY:

Q. In 1959 did Mr. Abrams request property damage [69] liability insurance? A. Yes, sir.

Q. Did he do it for a particular job? A. According to our records we don't have a memo which indicates that he wanted it for a particular job, but as issuing property damage for the entire property.

Q. Now, on page 21 of your deposition, let me read 20 and 21 and ask you if this testimony is correct:

"Q. Under the policy that we are concerned with in this law suit, namely 42 MCS 601753, was there any property damage liability coverage under the policy?"

And Mr. Martell said, at what time, and I said when first written, and you say, when first written, and I say yes. And your answer is no.

And then, is there any in 1957 and the answer is no.

And then, was there any in 1958 and the answer is no.

And then the question is: Was there a request for such coverage made in 1959?

And you say: Yes.

And the question is: By whom?

[70] "Answer: By Mr. Abrams."

And on page 21: "When?"

And the answer is: In February of 1959.

"Q. Now, what did he request?

"A. He had a particular job at that particular time which required a property damage limit of \$100,000.

"It was a job concerning PEPCO and at that time we added it on as \$100,000 property damage.

"Q. I beg your pardon?

"A. We added property damage, \$100,000.

"Q. I am asking you: What did Mr. Abrams request?

"A. \$100,000 property damage."

"Q. If you know, did Mr. Abrams have property damage under this manufacturers' and contractors' liability policy up until this time?

"A. I had attempted to sell Mr. Abrams property damage since 1957, and he did not wish to purchase any.

"Q. Did he tell you why?

"A. I assume he felt it was not necessary.

"Q. I don't want your presumption. Did he tell you why?

"A. Yes, but I don't recall his answer."

[71] Now 22:

"Q. Did you advise him to obtain it?

"A. Yes, I did.

"Q. Did you tell him why he should have it?

"A. Yes, I did.

"Q. What did you tell him?

"A. Because of possible claims from that particular occurrence.

"Q. But he never authorized you to make a purchase?

"A. No."

Now, is that correct? A. Yes, sir.

Q. You made a request for property damage liability and you say, as your testimony reflects, that it was prompted by a particular job?

A. That's correct.

Q. And you say that your records reflect that it was not necessarily confined to that particular job? A. Yes, sir.

Q. Now, what information do you have that would make you make that response? [72] A. In February of 1959 we wrote a memorandum to Hartford asking them to increase coverage. We did not mention any specific job, just to change the name and to increase the benefits.

Q. That is not quite what it said, is it? The document that you have just shown me says: "Effective today kindly issue an endorsement changing names of insurance to Lesmark, Inc. Also, increase MCS policy to 1/3/100. Also, add contractual liability and PD as per tax clause and other products (completed operations), liability and PD on auto policy increase limits to 100/300 and 100. Forward policy to our office at your earliest convenience. Thanks. Mrs. Pat Taylor."

MR. MAHONEY: I think Mr. Connolly should read from the document, and I think the document should first be marked for identification.

THE COURT: I think that it had better be identified. Mark it Hartford, identification No. 1.

(Whereupon, Hartford's Exhibit No. 1 marked for identification.)

BY MR. CONNOLLY:

Q. I read that accurately, did I not? A. Yes.

[73] Q. And the subject is Michael Abrams, and there are three policies, MCS 601753, and 876349, 746369, and you say this is the record which permitted you to say property damage coverage was requested generally?

THE COURT: Let me see that a minute, please, gentlemen.

MR. CONNOLLY: Certainly, Your Honor.

BY MR. CONNOLLY:

Q. Now, that document referred to a contractual liability and PD as per attached clause. Do you have a copy of the clause? A. I do not.

Q. Do you recognize this as being a copy of the clause? A. I don't have a recollection of it, but I assume it's correct.

MR. CONNOLLY: Is there any dispute of this, gentlemen?

MR. MAHONEY: This may be the clause, but I am not familiar with it.

MR. CONNOLLY: I will read it and see if it refreshes your recollection. I take it you do not agree with it?

THE WITNESS: I can't specifically say that this [74] would be it, but it is a typical contractual agreement.

THE COURT: Well, mark it as Hartford's No. 2 for identification. (Whereupon, Hartford's Exhibit No. 2 marked for identification.)

BY MR. CONNOLLY:

Q. Now, in due course, Mr. Feinman, endorsements were issued, were they not? A. Endorsements were not issued until after the loss.

Q. Well, you can refresh your recollection on that. What does the endorsement -- the date on the endorsement show? Seventeen, is that not so? A. That's the date it was typed on.

Q. In due course, you would have received them in a day or two? A. I don't know when we received those endorsements in our office.

Q. There is nothing to indicate that? A. No, sir.

Q. How about the letter in which you transmitted the endorsement to Mr. Abrams? A. The only way we transmit endorsements is to put them in an envelope, unless there's a premium with them.

[75] Q. So, your records wouldn't show when you sent them to Mr. Abrams? A. No.

Q. These endorsements, which have been in evidence now as Plaintiff's Exhibit 2-C, do show a date of July 17th on the bottom? A. As being typed, yes.

Q. You don't know whether they were typed that day, or not, do you? A. I believe that's the company's code of when it's typed.

Q. Do any of these endorsements show that Hartford agreed to provide property damage of any kind? A. It showed that Hartford what?

Q. Do any of the endorsements show that Hartford agreed to provide property damage of any kind? A. Yes.

Q. Which endorsement? A. Endorsements 3 and 4.

THE COURT: What are the exhibit numbers on those?

THE WITNESS: 2-C-3 and 2-C-4.

BY MR. CONNOLLY:

Q. Now, 2-C-3, which is endorsement No. 3, provides [76] property damage, but it also says, does it not, that it is agreed with respect to such insurance as is insured by the policy, the limits of the company shall be increased to read as stated herein, but only with respect to insured's operations of the Potomac Electric Power Company of 10th and E Streets, Washington, D.C.? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Is there any endorsement that shows that Hartford agreed to provide property damage insurance at any other location? A. No.

THE COURT: Let me see those.

BY MR. CONNOLLY:

Q. Now, two days after the loss was sustained in this case and endorsement was issued having an effective date in the loss in this case of July 30, 1959, which did provide general property damage liability in the amount of \$25,000 and \$50,000, is that not so? A. Yes, sir.

THE COURT: What is that marked?

MR. CONNOLLY: 2-E, Endorsement No. 7.

[77] THE COURT: That was fifty thousand, was it?

MR. CONNOLLY: Twenty-five and fifty.

BY MR. CONNOLLY:

Q. I would like this marked Defendant's No. 3.

(Whereupon, Defendant's Exhibit No. 3 was marked for identification.)

BY MR. CONNOLLY:

Q. I am going to show you a document which has just been marked Defendant's Exhibit No. 3 for identification, which purports to be Les-

mark and Walter Charron, and ask you whether you have ever seen that before, or not? A. No, I've never seen it.

Q. And that is dated July 17, 1959.

THE COURT: Is that an excavation contract?

MR. CONNOLLY: That is the contract involved in this case. It doesn't specifically say this. I would have to look at the plans and specifications; do you have that?

THE WITNESS: No.

\* \* \*

[78] BY MR. CONNOLLY:

Q. Well, Mr. Feinman, it is a practice in the insurance business, is it not, that when a party engages an -- [79] engages a contractor, the party in order to satisfy himself that the contractor is protected by liability insurance will ask that certificates of insurance be issued. Is that correct? A. That sounds correct.

Q. And it was Mr. Abrams' practice, probably because he wanted to save money, not to buy insurance generally, but to buy it for a specific job?

THE COURT: Well, we will strike out as to what you say, in order to save money. Ask him about buying it for a specific job.

BY MR. CONNOLLY:

Q. He would buy it for a specific job? A. Actually, PEPCO was the first dealings. I've never had any previous as to specific jobs.

Q. And when he asked to have a certificate of insurance for a particular job, you and Harris would issue a certificate of insurance for that particular job? A. Yes, we would.

Q. I take it you maintained at that time a supply of those particular certificates? A. That's correct.

Q. Now, concerning your observation with Mr. Abrams [80] and Lesmark, Mr. Abrams had dealt with Mr. Harry Harris before dealing with the new firm of Harris & Ogus, which was organized in 1957, is that correct? A. Yes, sir.

Q. And then continued to deal with Walter Ogus when it became Harris & Ogus? A. Yes.

\* \* \*

Q. I am going to show you documents in the Court file that was filed November 14th, 1964, entitled, "Answers of Defendants Harris & Ogus to Interrogatories," consisting of one, two, three and four pages and ask you if you signed those on behalf of Harris & Ogus? A. Yes, sir.

[81] Q. And you took an oath, Mr. Feinman, saying: "I, Harold Feinman, deposes and says that I am the Vice President of Harris & Ogus, and have read the foregoing interrogatories and they are true to the best of my knowledge, information and belief," is that right? A. Yes.

Q. All right, sir. Keep these in front of you, because I am going to ask you to turn to a couple of questions.

Now, in Interrogatory No. 2, it says: "State the names and addresses of all insurance companies for whom you acted as either special or general agent in the year of 1959." A. Shall I read it?

Q. Yes. A. "Hartford Accident and Indemnity Company, Hartford, Connecticut; Hartford Firemen's, Hartford, Connecticut; St. Paul's Fire and Marine, St. Paul, Minnesota; Aetna Insurance Group, in Hartford, Connecticut; New York Fire Insurance Company, New York, New York; Camden Fire Insurance Company, Camden, New Jersey; Providence Insurance Company, Providence, Rhode Island; Merchant's and Manufacturer's Insurance Company, New York, New York."

Q. How many policies in 1959 did either Lesmark or Michael Abrams have? [82] A. Is that Question 2?

Q. Yes. A. All right.

"Q. State precisely and in detail all insurance coverage that Harris & Ogus wrote for Lesmark, Inc. in 1959 and give the name and address of the company in which the insurance was written, the amount of premiums collected and the description of the insurance provided."



"A. February 6th, 1959, construction bond, PEPCO Company, \$235.90; June 11, '59, Holdup, Hartford, \$22.00; January 26th, 1959, Builder's Risk of Merchant's Manufacturing Company, \$235.00 --

Q. And that was Workmen's? A. No, it was Builder's Risk, with Merchant's and Manufacturer's Insurance Company, and that was \$255.01.

"August 19, 1959, Workmen's Compensation Company, Aetna's \$747.75; 8-21-59, M & C Liability policy by Aetna, \$296.40 deposit."

Q. The fact of the matter is, Mr. Feinman, when it came to handling Lesmark, Inc.'s Harris & Ogus insurance policy -- when it came to handling Mr. Abrams' or Lesmark's insurance policy, you heard what he wanted and you put these risks in various companies, did you not? [83] A. That is correct.

Q. And you are the one who decided what risk would go in what company, and what risk would not go in?

THE COURT: How many policies did Lesmark, or Abrams have at that time, altogether?

THE WITNESS: Six.

MR. CONNOLLY: Six with Harris & Ogus.

THE COURT: Well, how many companies?

THE WITNESS: Three.

\* \* \*

MR. CONNOLLY: That's all I have, Your Honor.

THE COURT: Well, I do; just a minute.

Mr. Feinman, on July 28th, 1959, what coverage [84] did Lesmark have with Hartford through Ogus?

MR. CONNOLLY: I must object. That is to be found in the policy documents.

THE COURT: Well, when he's answered it, I will then ask to see the policy documents.

Go ahead.

THE WITNESS: According to our coverage it's 100-300 bodily injury, 100,000 property damage coverage.

THE COURT: That was on the 28th of July. Now, the 100,000 property damage covered what?

THE WITNESS: The normal property damage that was covered in the coverage. There was no other provision for any other property damage other than the coverage in the policy provided.

THE COURT: It covered property damage on any job he was doing for anybody?

THE WITNESS: Yes, as far as property damage was concerned.

THE COURT: Now, where is this endorsement that shows that, out of all this stuff we have here?

THE WITNESS: The company never issued an -- those endorsements.

THE COURT: Where does it show you charged him [85] for this?

THE WITNESS: We never charged him for this. The company never issued it.

THE COURT: If they never issued it, how did he have it?

THE WITNESS: Based on a memorandum from an agent, we feel we can bind for an insurer.

THE COURT: Is that the memorandum in Defendant's Exhibit 1 -- Hartford's?

THE WITNESS: That's correct. Based on the certificates that we issued, and the follow-up we passed on.

THE COURT: What certificates do you have that would show that? The certificates I saw were limited to a specific job.

THE WITNESS: They were issued to a specific individual showing that these were the limits on the particular policies. We show that with copies to Hartford, showing the limits of the policies.

THE COURT: Now, wait.

THE WITNESS: And according to our records they never said no.

THE COURT: Where is that exhibit, Mr. Connolly, which would indicate, 2-C-3 and C-4, where are they --[86] both of those are to Potomac Electric. Well, this language says that it is agreed with respect

to such insurance as is afforded by the policy that limits such as liability shall be increased to read as stated herein, but only as respect to the insurance operations of the Potomac Electric Power Company. What does that mean?

THE WITNESS: This is the endorsement that the insurance company issued with those limits for that specific job only, which came many, many months after the original order in which the -- in the interim additional insurance of various other individuals showing the limits which indicated there was other individuals showing the limits. And it is noted on that memo, of course, it's just a note in which Mrs. Taylor indicated to the insurance company to please send those endorsements --

THE COURT: Now, you are talking about Exhibit 1?

THE WITNESS: That's correct.

THE COURT: This says: "Increase limits on MCS policy to a hundred, three hundred, one hundred. Also, add contractual liability and PD." Now, what does that mean? "As per attached clause."

THE WITNESS: Also added the contractual agreement as we enclosed with that memorandum and products of insurance.

[87] THE COURT: For how much?

THE WITNESS: For the same limits as indicated.

THE COURT: One hundred, three hundred, one hundred?

THE WITNESS: That's correct.

THE COURT: How do you get one hundred, three hundred, one hundred property damage?

THE WITNESS: That's one hundred, three hundred, bodily injury. This is the normal indication that the insurance company uses -- one hundred, three hundred stands for bodily injury, because the original policy only had fifty and one hundred, so we increased the bodily injury to one hundred, three hundred and the one hundred indicates property damage.

THE COURT: But "as per attached clause." Do you know what the

clause was?

THE WITNESS: I don't know, sir.

THE COURT: Could it have been limited only to PEPCO?

THE WITNESS: The clause, I am sure, in this particular event, had to do with the PEPCO job.

THE COURT: Well, that would have meant only increased -- only increasing it as to PEPCO, wouldn't it?

[88] THE WITNESS: But it also adds as respect to PEPCO's general endorsement, and the certificate in which we issue to the companies in various jobs, a copy of which was sent in Hartford, it would indicate that, and we had conversations with Hartford, even after that, requesting --

MR. CONNOLLY: This is pure hearsay, Your Honor.

THE COURT: Well, I know part of it's hearsay, and that part I won't pay any attention to. I am really trying to understand this thing, Mr. Connolly, and I do not.

MR. CONNOLLY: I understand, Your Honor, but I want to protect the record.

THE COURT: I understand that.

When you normally issue a binder, do you not charge for it?

THE WITNESS: The binder which we issue covers pending receipt of the official endorsement, after which we charge him.

THE COURT: And if you never get an endorsement, you never charge for it?

THE WITNESS: We keep asking for the endorsement.

THE COURT: Don't you consider the insurance as in effect?

THE WITNESS: Well, we consider that.

[89] THE COURT: And you don't bill it? You never bill it if the policy doesn't come through?

THE WITNESS: We assume we can bind the insurance company, and we will await the endorsement and cover that individual from this particular time until the endorsement comes in, such as the endorse-

ment that the Hartford sent in, which they did send in, came in at least five to six months after the original order.

THE COURT: What endorsements were they?

THE WITNESS: They are referring to the PEPCO job, and that endorsement didn't come in until five months after the original order.

THE COURT: The Potomac Electric job is effective 2-11-59, the date you sent your wire.

THE WITNESS: Look at the time they typed that endorsement on the bottom.

THE COURT: Does that mean typed? I don't know whether it means typed, or not.

THE WITNESS: Well, in our dealing with all the insurance companies, the statement they put on the bottom of the policy is the endorsement and the date is usually typed on that particular policy or endorsement.

THE COURT: Well, when this general addition came [90] in, which is Plaintiff's Exhibit 2-E, that is Aetna's Exhibit 2-E; well, the effective date of insurance, property damage for \$20,000/\$50,000 was July 30th, '59, that according to your figure would be typed on August 6th, '59. Is that right?

THE WITNESS: That's right.

THE COURT: Did you complain about the effective date?

THE WITNESS: The endorsement that was written July 17th says that we are returning the above copy to you for correction. Please refer to our records for changes. Also forward renewal for WH policy with a minimum.

THE COURT: That was written before this was written.

THE WITNESS: July 17th.

MR. CONNOLLY: That's not the policy in issue, sir.

This is what I say, Your Honor. You just can't permit these witnesses to run off like this. That's why I say the record is all fouled up.

THE COURT: I will get our record straightened out. That apparently is not related to this particular policy?

THE WITNESS: That's correct.

[91] THE COURT: Do you have in your files any letter, memorandum, or anything else which complains about the effective date of this exhibit, Aetna's 2-E, which says the effective date is July 30th, '59, which is a day after this thing occurred?

THE WITNESS: Not for those specific endorsements, no, sir.

THE COURT: Is it the custom of your company to allow a binder to be out for five months and not be issued?

THE WITNESS: Our insurance companies, including Hartford, are usually late with policies and endorsements.

THE COURT: Six months late?

THE WITNESS: We have cases even later -- more than that.

THE COURT: If I buy an automobile policy from you today, I can't expect it for six months?

THE WITNESS: Well, as an agent, we can type those in our office and we can get those out pretty fast.

THE COURT: Couldn't you have typed this?

THE WITNESS: No, we have never issued a policy in our office for liability. The company usually issues this.

THE COURT: Does that mean you haven't any authority [92] to issue them?

THE WITNESS: The liability policy?

THE COURT: Yes.

THE WITNESS: We have authority to bind it, but the company has not given us right to write the policy.

THE COURT: Did you send any endorsement letter or anything else to the insured in this case telling him that he was covered for property damage generally from February 11th on?

THE WITNESS: In our dealings with our clients, when they request something --

THE COURT: I just asked you: Did you do it?

THE WITNESS: No.

THE COURT: Well, the fact of the matter, you don't know what happened in this case, isn't that just about what it comes down to?

MR. MAHONEY: No, Your Honor. I don't think that is quite fair. There has been a memorandum that was marked which shows the attempts of the agency to follow-up. And Mr. Connolly's exhibits --

THE COURT: Now, Hartford's Exhibit 1, and somebody asked Bob Guildy (sic) to check on this, that is on the May 8th follow-up, but there is no showing that that [93] was ever done.

MR. MAHONEY: Well, he can show you --

MR. CONNOLLY: Well, he doesn't know that. That isn't even your handwriting, is it?

THE WITNESS: No.

\* \* \*

[94] MR. MAHONEY: I would like to say for the record, and I would like to offer into evidence the certificate to which I thought the witness referred, and these are Exhibits 7, 8, 9 and 10.

[95] THE COURT: Is there any objection?

MR. CONNOLLY: No objection.

(Aetna's Exhibits Nos. 7, 8, 9 and 10 received in evidence.)

#### RECROSS EXAMINATION

BY MR. CONNOLLY:

Q. Now, on these Exhibits, 7, 8, 9 and 10, copies were mailed to Hartford? A. No, they were not.

Q. If they had been mailed to Hartford, what date would they have been mailed? A. The date would be on the bottom.

Q. Are you sure about that? A. I am not sure.

Q. Now, you say you have authority to issue binders. A. That's right.

Q. Is there any document, record, piece of paper in your posses-



sion, or back at the office, that says you have such authority?

MR. MAHONEY: I object, Your Honor. I believe it is already in evidence.

MR. CONNOLLY: Well, I believe it's specifically mentioned there.

[96] THE COURT: Then you agree that it's either under the agency agreement, or doesn't exist?

MR. MAHONEY: I don't agree to that, Your Honor.

THE COURT: Well, I guess Mr. Connolly's question is in order.

MR. MAHONEY: Well, Your Honor, he says, is there any piece of paper. I guess he was going to go beyond that.

THE WITNESS: Other than the contract and by other actions with the Hartford Company in doing business.

BY MR. CONNOLLY:

Q. Other than the contract, you say the only other thing would be by your actions? A. Right.

Q. Now, do you also claim to have authority to waive any exclusions under the policy? A. No, we do not.

\* \* \*

[100] MR. MAHONEY: Mr. Abrams.  
Thereupon

MICHAEL M. ABRAMS

called as a witness on behalf of Aetna Casualty, was duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. May it please the Court:

Will you state your name, sir? A. Michael M. Abrams.

Q. Where do you live, Mr. Abrams? A. 4720 Chevy Chase Drive, Chevy Chase, Maryland.

Q. What is your occupation, sir? A. I am a general contractor.

Q. And what relationship do you have to Lesmark, Inc.? A. I am President of Lesmark, Inc.

Q. Was that corporation formed in February of 1959? [101] A. It was in business in February 1959. It was formed, I believe, prior to that date.

Q. Now, prior to that date, Mr. Abrams, what was your business? That is, prior to February 1959? A. I was a general contractor.

Q. What type work did you do then? A. I did primarily work on a builder's fee basis.

Q. Would you explain that, sir? A. A man with a business would hire me to build a place where they would pay all costs, plus a fee, which would be a fixed amount that I would receive for my services.

Q. And who would take out the insurance at that time? A. At that time the owner would take out the insurance on all of the buildings, fire and possibly property damage, and that type. I would only take out the insurance requested by the owner on workmen's compensation liability.

\* \* \*

[102] Q. When did Lesmark, Inc. start in business? A. I wouldn't know the exact date, but it was prior to 1959. I think it was possibly '57 or '58.

Q. All right. During what period of time did you operate as a general contractor on this fee basis that you are talking about? A. Well, I operated from 1954 on, on a fee basis. We did both types jobs, but at some period of time I was doing only fee work, other periods of time we did some fee work and some other work.

Q. When did your operations enlarge, during what period of time? A. Well, my operations enlarged, I would say, starting in '59 up to now.

Q. Now, how long have you been doing business, or how long had you been doing business with Harris & Ogus, Inc.? A. I have been doing business with -- well, it was first Harry L. Harris, then it was Harris, then it was Harris & Ogus, since the [103] day I began in the construction business, which was on my own, which was back possibly in 1953, '54.

Q. Now, during that period of time would you get advice from them

as to your insurance need?

\* \* \*

Q. Yes. A. I got advice from them on all my insurance needs. They were my sole insurance broker.

Q. All right. Now, when did you talk to anyone in connection with the Pepco job, do you recall that, concerning your insurance need? A. Well, when I started the Pepco job, Pepco required me to have certain insurance and I called the Harris & Ogus firm and I believe Mr. Feinman discussed it with me and, in fact, Pepco reviewed my insurance very thoroughly to insure I was covered completely to do any work for them. And that's the time I had conversation with Mr. Feinman.

Q. Did Mr. Feinman provide you with the insurance for that job at Pepco? A. [104] Yes, he provided me with all the insurance required by Pepco, and they accepted the insurance.

Q. Could you tell us what time of the year that was? A. This was back in January, I think it was January -- February of 1959.

Q. All right.

Now, from that time until the date of the accident on which we are inquiring, July 28th, 1959, did you have other construction jobs? A. Yes, we did on a warehouse for Bladen Realty, we had that job, and we also had another job, I am trying to remember the name --

Q. How many construction jobs did you have during that period? A. We had a fire house, we were doing a fire house for the Rockville Volunteer Fire Department. We were doing three jobs at that one time.

Q. How many times -- jobs did you do between the I Street job? A. I was doing three jobs.

Q. Now, each of these jobs -- A. You know, they were different stages of construction.

[105] Q. On each of these jobs did you consult Harris & Ogus, Inc. concerning your insurance needs? A. Yes, I did.

Q. How would you tell them as to what you needed, or what would they tell you? What was the procedure that took place? A. The pro-

cedure was for either to speak to them on the telephone or for them to come in and read the specifications to see what insurance was required.

Q. Was this also true as far as the I Street job was concerned?

A. Yes, it was.

Q. Did Mr. Feinman advise you as to what you needed for the I Street job by way of insurance? A. Well, he knew -- I read him the specifications, or he came in and saw them, and it required me to supply a certificate and I assume that it was all taken care of, since he had taken care of it for other jobs.

Q. Now, during these several jobs you mentioned between February 1959 and the I Street job, did you engage in any excavation work?

A. All jobs had some means of excavation, some form.

Q. Now, Mr. Abrams, when were you first advised that [106] there was no insurance coverage for the I Street job, for the accident in question? A. About one day -- I think it was the second or third day after the accident had occurred, Mr. Harris met me on the job and he told me at that time I was not covered for any of this damage.

\* \* \*

[107] Q. Now, Mr. Abrams, during these several construction jobs before the I Street job, were there any claims that arose out of these jobs for property damage, or bodily injury? A. No, sir.

\* \* \*

#### CROSS EXAMINATION

BY MR. MARTELL:

Q. Mr. Abrams, I show you what has been marked as Defendant Ogus' Exhibit No. 2 for identification and direct your attention, sir, to the last page of that, I believe it is page 4, of that release and ask if that is your signature on there, sir? A. Yes, it is.

Q. Do you recall where you were when you signed that? A. I don't recall. May I read it over?

Q. Certainly, sir. A. I was advised by my attorney, Mr. Barker, to sign this release for the money he received.

Q. And where were you when you signed it? A. I think he gave me the paper and I signed it, he told me to sign it. I took his advice.

[108] Q. And you swore to it before a Notary Public in his office? A. I believe so. This was the advice of counsel.

Q. Then, Mr. Barker at that time was your attorney insofar as this case was concerned? A. Yes, he was.

Q. As a matter of fact, he was your general attorney for everything, wasn't he? A. Up until two years ago.

Q. 1964? A. That's right.

Q. Since the judgment against you, Mr. Abrams, in 1964, as a result of this law suit that was filed against you by the Ash's and Charron's, has any effort been made by the Ash's, the Charron's, or their attorneys, or the Aetna Casualty Company to attach any of your bank accounts? A. Not to my knowledge.

Q. Have you ever received a subpoena to appear for oral deposition as to any of your location of any of your assets in connection with garnishment proceedings, or execution of judgment? A. No.

Q. Is Lesmark, Inc. still in operating condition, sir? A. No.

[109] Q. Has it gone out of existence? A. No. It's still in existence.

Q. You are still in the building business? A. Yes, sir.

Q. I show you now, sir, what has been marked as Plaintiff Aetna's Exhibit No. 2 for identification and ask if you can identify that, sir? A. This is an insurance policy.

Q. Where have you seen it before, Mr. Abrams? A. But this policy is made out in my own name. It's an old policy. I have seen policies of this type, possibly not this exact one, but I see it's in the name of Michael Abrams. This is before I was a corporation.

\* \* \*

[110] Q. Directing your attention, Mr. Abrams, to this which is

marked Plaintiff Aetna's Exhibit 2-C-3, which is an endorsement to Policy No. 42 MCS 601753, which is the same as that policy; is that right, sir? A. Yes, that's right.

Q. And that effectively changes the named insured? A. That's right, that changes the named insured to Lesmark, Incorporated.

Q. So that, then, is the same policy; is it not, sir? A. That's correct.

Q. That policy there which is marked No. 2 Exhibit No. 2 for identification, was a policy that you turned over [111] in response to a subpoena to the Plaintiff's counsel in this case, counsel for Aetna; isn't it sir? A. I don't think I turned it over. I think Mr. Feinman turned it over.

Q. No, this one right here, sir.

MR. MAHONEY: I obtained that from Mr. Barker.

THE WITNESS: I think Mr. Barker gave it to him.

BY MR. MARTELL:

Q. You had it in your possession. Mr. Barker had it during the trial. A. Mr. Barker was keeping it for us, yes.

Q. That was the one originally issued to you by Harris & Ogus, right? A. That is correct.

Q. That was part of your personal effects, your business affairs? A. Yes, it was. It was part of our business. This is the insurance we had in the business.

Q. And that is the only policy, is it not, Mr. Abrams, that you had which protected you or Lesmark, Incorporated in the construction work you were doing? A. I don't know. I see this policy. I think we did have some other policies. Now, whether they -- Mr. Feinman [112] would know more about that than I would.

Q. Liability policies? A. I know we had a Workmen's Compensation Public Liability Policy which this is not. I don't know whether that is part of this, or whether that would be a separate policy.

Q. Now, did you ever read that policy? A. Oh, a long time ago,

when I first -- back in '54, I read the policy, a lot of fine print, it's difficult to understand it, but I did read them over a long time ago.

Q. I direct your attention specifically to Exclusion L of that policy and ask you to read it now, Mr. Abrams.

\* \* \*

Q. No, just read it over to yourself. A. Okay.

Q. Does that refresh your recollection of the terms of that policy, sir? A. Well, I have never really read this, this is the first time really that I really read this part of the policy, [113] but I see what it says here.

Q. All right. A. This is what Mr. Harris brought up to me, maybe that's when I first read it.

Q. When was that, when did he bring it up to you? A. After the accident occurred he told me this was there and then I went to the office and found it and read it over.

Q. He told you after the accident that damage by excavation was specifically excluded, didn't he? A. I thought I was covered. I argued with him on the job, he knew I was doing construction work, and you can't possibly build a building without some sort of excavation.

Q. When you signed the contract to build this building on I Street, who was going to do the excavation for you? A. I was going to do it. Have always done all my excavation.

Q. You didn't have an excavating contract? A. We hired a machine. We did our own footing work. We never gave out footing work to anybody. That's normal procedure.

Q. Do you recall during the trial of the case, sir, [114] that the District Inspector testified that the excavation work you were doing was illegal?

MR. MAHONEY: Oh, I object to that, Your Honor.

THE WITNESS: I don't think I ever said that.

THE COURT: Overruled.

BY MR. MARTELL:



Q. Do you recall that, sir? A. Shall I answer the question?

THE COURT: Yes, answer the question.

THE WITNESS: I don't believe that ever came up in the trial, what we were doing was illegal. That would be a question of determining -- I don't believe that.

BY MR. MARTELL:

Q. Now, Mr. Abrams, when was it that you first contacted Mr. Feinman or anyone else at Harris & Ogus, or Walter Ogus with regards to any insurance coverage for the I Street job? A. I always contacted --

Q. No, no, not when you always did, when did you? A. I contacted them before I ever signed the contract.

Q. When? A. This would be back -- I don't remember the date I signed the contract, I think in June, in June, because [115] part of the contract was an insurance certificate.

Q. June of what year? A. 1959.

Q. And how did you contact them? A. Contacted them by telephone.

Q. Who did you talk to? A. Talked to both Mr. Feinman and Mrs. Taylor, I don't remember exactly, but it was one of them.

Q. What did you tell them? A. I told them they were -- we were low bidders on the job, on the I Street job, and it required insurance, and I told them to come over and look at the insurance paragraphs in the specifications, which I have done on other jobs, the same thing.

Q. You told them to come over and look at what? A. Read the specifications for the type of coverage required for this particular job.

Q. You are talking now about the contractual liability clause of the policy? A. I am talking about all insurance. I am not an insurance man. I am a contractor. I don't know anything about insurance, I wanted it to protect me, that's why I hired the man.

[116] Q. You hired Mr. Feinman? A. Harris -- then Harris & Ogus, then the Ogus Company, for insurance services, they are the ex-

pert, I am no expert in insurance.

Q. Well, on this particular occasion did you take the plans and specifications into the Harris & Ogus office? A. They came to my office. I never brought any plans, they gave me a service of visiting me at my office.

Q. Who came to your office? A. Mr. Feinman, I'd say almost all the time.

Q. Now, we know we are only concerned with this particular occasion. A. I can't remember.

Q. You don't even know if he ever came out there, do you? A. I would say he came, many, many times to my office.

Q. Mr. Abrams, we are concerned now with one job, the I Street job. When did Mr. Feinman come out to your office in response to your call and look at the plans and specifications? A. I couldn't say exactly, it was too long time ago, I don't remember when exactly. I know he came out, whether on this particular -- I just can't tell you exactly, but [117] this was part of what he was doing for us.

Q. You only had four jobs in 1959, didn't you? A. We had other jobs. We have done a lot of work. He had been out many times.

THE COURT: Wait a minute, Mr. Abrams. Did I understand you to say you don't know whether Mr. Feinman came out to your office in connection with this I Street job, or not?

THE WITNESS: That is correct.

THE COURT: Although you just testified under oath that you read the specifications on this job to him?

THE WITNESS: I read the specifications to him, either I or my secretary, on the telephone. I can't say specifically he came out to my office.

THE COURT: You read those entire specifications over the telephone?

THE WITNESS: Read them to him. Either we read them to him, or he came to my office and read them himself. It was one procedure,

but I know it was one or the other.

BY MR. MARTELL:

Q. Mr. Abrams, did you ever tender back the money to me or to my company with regard to the money you received for this release?

[118] A. I never --

THE COURT: The release is exhibit what?

MR. MARTELL: It is Ogus' Exhibit No. 2 for identification, Your Honor.

BY MR. MARTELL:

Q. Answer it yes or no, did you? A. No, I never received money, I don't know anything -- I never tendered it back to you.

Q. You never received the money? A. I never received it myself.

Q. You signed the check? A. I never turned it back to you, that I know of.

MR. MARTELL: I have nothing further, Your Honor.

BY MR. CONNOLLY:

Q. Mr. Abrams, I understood that you decided to go into the building business in 1954 and you sought out Harry Harris to advise you on insurance problems; is that right? A. That's right.

Q. Was Harry Harris a friend of yours? A. Harry Harris was a friend through a relative, I would say, yes, sir. I knew him through a relative.

Q. You didn't know anybody else in the insurance business? [119]  
A. No.

Q. You went to Harry Harris because he was a friend of a relative? A. That's correct.

Q. How close a relative was it? A. Well, it was my brother-in-law.

Q. Harry Harris was your brother-in-law? A. No, friend of my brother-in-law.

Q. All right. Was your brother-in-law in the insurance business?  
A. No, sir.

Q. Was Harry Harris at that time in business for himself? A. Yes, sir.

Q. Subsequently he formed a partnership with Walter Ogus; is that right? A. That's correct.

Q. And at the time that this matter of I Street took place he was a partner of Walter Ogus and they operated their business under the name of Harris & Ogus; is that right? A. That's correct.

Q. And when you first went into business you weren't [120] a general contractor, were you? A. No, I was not. Well, I was from '54 on. Before that I was also with another company.

Q. Now, you had more than one kind of insurance in your business, did you not? A. All my insurance -- more than one kind, you mean, Workmen's Compensation?

Q. Yes, you had automobiles, didn't you? A. That's right.

Q. You had a payroll protection? A. That's correct.

Q. Things of that sort, fire protection? A. That's correct.

Q. All right. Do you know what companies -- A. All my insurance, to my knowledge, was written through Harris and I imagine it was all Hartford.

Q. Don't imagine anything. If you don't know the answer, say you don't know, and we will get along faster. A. I don't know exactly whether it was all with Hartford or all with two different companies.

Q. As a matter of fact, you don't know what company it was in, do you? A. I knew my construction insurance was all with Hartford.

[121] Q. Do you remember signing some interrogatories that were addressed to you by me in this case back in 1962, in December, which you made? A. On the 6th day of March 1963? Let me have the Court file, please.

THE COURT: Let's mark that, Mr. Connolly, in case we need it again.

BY MR. CONNOLLY:

Q. Is that document bearing your signature? A. Yes, it does.

Q. Do you recall you took an oath to it on the 6th day of March, 1963? A. Yes, sir.

MR. CONNOLLY: Let's have this marked with Defendant's Hartford's next number, please.

THE DEPUTY CLERK: Defendant Hartford Exhibit No. 4 for identification.

(Whereupon, Defendant Hartford's Exhibit No. 4 marked for identification.)

BY MR. CONNOLLY:

Q. I want to direct your attention to No. 2. The question to which that is an answer reads as follows:

[122] 'State the kind and character of insurance carried by Lesmark, Inc. for each of the five years preceding 1959 and state the name of the agent with whom Lesmark dealt in securing such insurance, and the name of each company issuing an insurance policy.'

Now, what answer did you make under oath in March of 1963 to the question? A. All handled by Harris & Ogus, and they have records.

Q. Are we to infer from that you did not know when you made answer to those interrogatories what companies the insurance was in?

A. That's right. I didn't know exactly, I didn't have the policies, they are all expired. I couldn't remember back who they were with.

Q. Well, you had policies issued, did you not? A. I did not have the old policies back in '54, '55.

Q. You had some information, did you not? A. We usually turn the policies back to Harris & Ogus for the new Policies. If I had the information, I would have given you the information.

Q. Well, the fact of the matter is, in March of 1963 you didn't know what company Harris & Ogus had put your [123] insurance with, did you? A. Well, you mean in 1963?

Q. In 1963 when you answered that question. A. In '63 I did not have any records of what companies Harris & Ogus put the policies with.

Q. Now, who was your burglary insurance with in 1959, what company? A. I don't remember.

Q. Who was your workmen's compensation insurance with in 1959? A. May I take a good guess? I would say it was with Hartford.

Q. Don't guess. If you don't know the answer, say I don't know. A. I don't have the policy, I don't know.

MR. MAHONEY: I will stipulate he doesn't know what policies Harris & Ogus put on it.

THE COURT: You mean he signs an affidavit to something and he doesn't know anything about it?

MR. MAHONEY: He said he knew Harris & Ogus placed the policy but he didn't have the records.

MR. CONNOLLY: I don't care for the stipulation, Your Honor.

[124] THE COURT: What is that?

MR. CONNOLLY: I don't care to take the stipulation.

THE COURT: All right.

BY MR. CONNOLLY:

Q. What company did you have your public liability insurance with in 1959? A. In '59, if I don't have the policy, I can't say I had it with what company.

Q. What company did you have your fire insurance with? A. I can't answer your question, sir. If you would have told me you wanted this, I would have gotten the records.

Q. If you don't know, say you don't know, and we will get along better. A. I don't know.

Q. As to your auto insurance, what company did you have that with in 1959? A. Hartford.

Q. Are you sure about that? A. I'm almost positive, yes.

Q. Do you still deal with Harris & Ogus? A. No.

Q. Who do you deal with now? [125] A. Victor O. Shinnerer.

Q. Who is your automobile insurance with now? What company? A. Aetna.

Q. And your workmen's compensation? A. I believe with the same company.

Q. And your fire insurance? A. I wouldn't know the name.

Q. Public liability insurance? A. I believe that would be Aetna. If you would ask me to bring the insurance policies --

Q. The fact of the matter is, you really don't know and have never cared what company the insurance was placed with? A. No, sir, no, sir.

Q. You relied on the man you were dealing with? A. I relied on the man, definitely, but I don't remember the names of the companies.

Q. Now, as I understood the practice that you described to Mr. Mahoney and to Mr. Martell, when you would get a job you would call Mr. Feinman or Mr. Harris, or somebody in their office and go over the particular job with them in order to get insurance for that job? [126] A. That's correct.

Q. Now, the fact of the matter is that prior to 1959 you did not have property damage insurance for your building construction work of any kind, did you? A. I did not have it to my memory when we did a fee, most of the jobs were fee jobs, and the owner took out the property damage.

Q. You didn't have it? A. I did not have it.

Q. Now, did Mr. Feinman try to sell you general property damage coverage?

MR. MAHONEY: When?

BY MR. CONNOLLY:

Q. Prior to 1959. A. I believe that Mr. Feinman and I did talk about it, we did discuss it.

Q. And you decided that you didn't need it, isn't that right? A. Well, after our conversation I think we both agreed that it wasn't necessary since none of the work I was doing required it.

Q. Whether Mr. Feinman agreed with you, or not, you at least agreed you didn't need it; isn't that so? [127] A. Well, it wasn't re-



quired in the specifications for the work we were doing.

Q. I am not talking about whether it's required in the specifications, or not. You knew what property damage coverage in the building construction work was, did you not? A. I know what property damage is, damage to somebody else's property.

Q. Due to what? A. Due to the work of my workmen.

Q. Right. Now, prior to 1959 you didn't have that to cover all of your operations, did you? A. I didn't need this.

Q. You didn't have it; isn't that right? A. Lesmark, Incorporated did not have it.

Q. Mr. Abrams, please answer the question. Neither you, as Michael Abrams, or Lesmark, Inc. had it; isn't that so? A. We didn't have it, that's correct.

Q. You do recall conversations with Mr. Feinman when Mr. Feinman discussed your getting property damage insurance, correct? A. We did discuss it prior to '59, yes.

Q. Right. And you agreed prior to 1959 that you [128] didn't need it; isn't that so?

MR. MAHONEY: He has asked this question about three times. The answer is yes, Your Honor. I don't know what he expects now.

THE COURT: All right. Go ahead.

BY MR. CONNOLLY:

Q. Correct? A. Yes.

Q. All right. Prior to 1959, most of your work was fee work and you say that the owner who engaged you to do his construction work for him took out a policy which covered you? A. That is correct.

Q. How do you know that? A. Well, I was doing the work as a supervisor, in other words, the work was being done for the name of the owner. He was actually hiring me in a supervisory capacity.

Q. How do you know the owner took out insurance to cover you? A. Because I went to the trouble of making sure that Michael M. Abrams, since I was a supervisor, was covered by his policy.

Q. You say you went to the trouble to find out, how [129] did you go to the trouble to find out; what did you do? A. The loan agency, the people that loaned the money to build the building, required certain insurance. Since I was the supervisor I made sure the owner took out the proper property insurance.

Q. What did you do to make sure, did you go to see somebody? A. I called the owner to call his insurance agency to get the policy and send the certificate to the loaning agency.

Q. All right. And you satisfied yourself in that manner that you were covered? A. I satisfied myself, yes, sir.

Q. Now, prior to 1959 was all your work on a fee basis acting as a supervisor? A. I would say the major portion of it.

Q. By major portion, that could be anything from 50 to 100 per cent? A. That's correct.

Q. Give us a little better estimate. A. Let's say between 50 and 75 per cent.

Q. All right. Prior to 1959 when you got any contract work, did the contract ever require, did it ever [130] contain specifications requiring you to have certain types of insurance coverage? A. Well, the specifications mentioned the type of insurance to be covered.

Q. Now, what would you do when you entered into a contract containing specifications requiring you to obtain certain insurance coverage? A. Well, as I explained previously, our normal procedure would be to call my insurance agent.

Q. We are trying to find out what is normal. A. The normal procedure.

Q. Mr. Abrams, hold it a minute.

Prior to 1959 when you entered into a contract which contained specifications calling for you to take out certain insurance, don't tell us what your normal procedure was, tell us what you did prior to 1959.

A. As far as I can remember we would call our insurance agent and

read the paragraph of the insurance coverage, or I would ask the agent to come in and read the insurance part of the specifications.

Q. And whom would you call before 1959? A. I would call Harris & Ogus' office, it would either be Mr. Feinman or Mrs. Taylor.

[131] Q. Now, there came a time in early 1959 when you got a job with the Potomac Electric Power Company, didn't there? A. That's correct.

Q. Now, prior to this time, you were getting insurance on a job by job basis, weren't you? A. No, certain policies covered me for --

Q. Put it this way: You were getting coverage on property damage for your building operations on a case by case basis depending upon the needs specified in the particular contract which you just signed; isn't that so?

MR. MARTELL: Your Honor, I object. This is contrary to the witness' testimony. He said he never had property damage insurance prior to 1959.

THE COURT: I will overrule the objection.

THE WITNESS: We got it, as I explained to you, on a fee basis on the particular jobs.

BY MR. CONNOLLY:

Q. All right. Forget about the fee basis. On those jobs when you entered into a contract which had specifications requiring you to carry certain types of insurance, you just finished telling us that you would call Harris & Ogus and you would read those specifications? A. Yes.

Q. What you were asking for, is it not a fact, was [132] insurance to cover that particular contract? A. On that particular -- that's correct, on property damage.

Q. Correct. Now, in early 1959 you got a job with Pepco; isn't that right? A. That's correct.

Q. And Pepco had very detailed specifications requiring you to take certain insurance; isn't that a fact? A. They had more insurance than we had taken previously, yes.

Q. Now, what did you do with this Pepco contract, did you go to see Mr. Feinman? A. I believe Mr. Feinman came to my office.

Q. This would be in early February, 1959, correct? A. That's correct.

Q. Did you give him a copy of the specifications? A. I can't recollect whether I gave it to him.

Q. I show you Hartford Exhibit No. 2 for identification, and ask you if you recognize that as being an accurate copy of the insurance specifications for the Pepco job? A. I believe this is a copy of a page out of their records. I have the specifications here, may I refer to mine?

[133] Q. Please get your own specifications. Let's get the ones you have in your possession, then we will see whether this Defendant Hartford's No. 2 is an accurate copy.

(Thereupon, the witness momentarily left the stand and then returned to the stand.)

BY MR. CONNOLLY:

Q. Did you examine the index? A. Yes. This is not the exact same, --

Q. You are reading workmen's compensation? A. It's the same. I don't know where you got this (indicating). This is not the same type.

Q. It is obviously something that has been retyped, but isn't the language the same? A. Let me see.

Yes, the language is the same. It was typed. I am assuming it was typed.

Q. Article 17 of the specifications of the Pepco sub-station job at 23rd Street is entitled: "Workmen's Compensation and Liability Insurance," correct? A. Correct.

Q. And the words which are typed on Hartford Defendant's Exhibit No. 2 for identification are the same [134] words that comprise Article 17 of the contract? A. The last word is "hereunder." Yes.

THE COURT: Wait a minute. The reporter cannot hear what you

are saying.

THE WITNESS: It is the same as the specifications.

THE COURT: In other words, the Hartford Exhibit No. 2 is the same as the specifications in your Pepco contract, right?

THE WITNESS: Yes, sir.

THE COURT: What did you say the title of that was, Mr. Connolly?

MR. CONNOLLY: It says: "Article 17, Workmen's Compensation and Liability Insurance, Pepco Sub-Station, 3425-23rd Street, Southeast."

BY MR. CONNOLLY:

Q. The first paragraph provides that you, being the contractor, will take out and maintain workmen's compensation benefits as required by law, correct? A. That's correct.

Q. That you should maintain in your own name public liability insurance for bodily injury and death with limits of \$100,000 for any one person and \$300,000 for any one accident; is that correct? A. That's correct.

[135] Q. Property damage in the amount of \$100,000/\$100,000, correct? A. That's correct.

Q. And I am quoting now:

"And the said policy shall contain endorsement for contractor's contractual obligation and for completed operations." A. That's correct.

Q. (Reading) "The contractor shall likewise require his subcontractors, if any, to provide for such workmen's compensation and public liability insurance." Is that right? A. That's correct.

Q. Did you have any subcontractors on this Pepco job? A. Yes, we did.

Q. Did you require them to carry insurance? A. Yes, we did.

Q. How did you go about that? A. We wouldn't pay them unless they gave us a certificate of insurance.

[136] Q. What did you do with these certificates of insurance? A. We kept them with the contracts.

Q. How did you know those certificates complied with these paragraphs? Did you read them? A. I did not read them myself.

Q. Who did read them? A. I don't remember. I don't think anybody actually -- maybe my secretary read them, I can't say.

Q. Don't guess. Did you take them down to Harris & Ogus? A. I think -- I believe -- I may have showed them to Harris & Ogus, I don't remember so far back.

Q. If you don't, say you don't know. A. I don't know.

Q. The next paragraph provides :

"The contractor shall take out and maintain automobile public liability insurance in the amount of \$100,000 and \$300,000 for each truck and/or passenger automobile and property damage coverage of \$100,000/\$100,000 for each truck and each automobile engaged in the work under this contract."

[137] MR. MAHONEY: If Your Honor please, I am going to object to this entire line of questioning. There is no issue in this case that the proper insurance was provided the Pepco job. There is no question of that at all. The accident didn't arise out of the Pepco job, this happened in February of 1959. The only issue in this case is: Was there coverage for the July job. What happened at the Pepco job I think is entirely immaterial.

THE COURT: If you are willing to admit that the only issue in the case is whether there was coverage on the I Street job, all right, I will sustain your objection.

MR. MAHONEY: No, no.

THE COURT: But that will knock you out of your claim that there is a course of conduct which should have resulted in insurance covering excavation.

MR. MAHONEY: Well, I don't see how this is material to that second point.

THE COURT: Well, it is very material in my opinion, so I will overrule your objection.

BY MR. CONNOLLY:

Q. I just read the second paragraph, actually, have I not? A. Yes.

[138] Q. The next paragraph says:

"All of the said policies shall be submitted to the company for its approval." Does it not? A. That's right.

Q. Was that done? A. Yes, sir.

Q. Pepco saw the policies, is that right? A. They saw every policy.

Q. "The contractor agrees that the coverage shall not be cancelled until after the entire work has been completed, all settlements made and all releases delivered to the company."

The next paragraph:

"The contractor agrees to indemnify and save harmless the company and any and all of the company's officers, agents, employees, or servants, from any claims, loss or liability for death, injury, damage, costs, charge or expense, whether direct or indirect, to any person or property, regardless of whose negligence actually caused or is claimed by anyone to have caused, such death, injury or damage, which may happen, be done, or caused, arising out of the contract or any work performed or to be performed hereunder."

[139] Is that what it says? A. That's correct.

Q. Now, you say that you gave, or you read, or had Harris & Ogus read this sometime early in February? A. That's correct.

Q. And you believe it was Harold Feinman? A. That's correct.

Q. You don't remember whether you read it to him over the telephone or he came -- A. I would say --

Q. Wait a minute. A. That was Harold Feinman.

Q. Wait a minute. The last thing we want, Mr. Abrams, is a guess. If you don't know, bear in mind you are under oath, and say you don't know, and that would be the accurate answer. A. I would say it was



Harold Feinman on this particular job, definitely.

Q. Do you remember whether you went to Harris & Ogus, you read it to him over the telephone, or Harold Feinman came to your office?

A. Harold Feinman came to my office.

Q. Where was your office at that time? [140] A. My office at that time was 639 Sligo Avenue.

Q. Silver Spring? A. That's correct.

Q. And you have a recollection of Mr. Feinman coming to your office and reading the Pepco specifications? A. That's right, on this particular job, yes.

Q. Now, how do you know Pepco saw the policies? A. The policies, the certificate, was sent to them.

Q. How do you know that? A. I sent it to them. Not I, excuse me I got a copy of the certificate that was sent by Mr. Feinman to Pepco.

Q. You got a copy of it? A. I got a copy of it.

Q. Now, I ask you -- you said a few moments ago that all of the policies were to be submitted to the company for its approval and you said that was done. I am asking you how you know that? A. I got a letter from Pepco, from Mr. Staid that they accepted my insurance, they got a copy of all policies. We had quite a bit of correspondence at one time, something was wrong with one policy, I called Mr. Feinman about it and then we submitted it again and they approved them.

[141] Q. So, after that series of transactions you were satisfied that you had acquired insurance sufficient to satisfy Article 17 of the Pepco contract? A. That's right.

MR. CONNOLLY: This is a non-jury case, I take it there is no objection to putting this in out of order, is there?

MR. MAHONEY: No.

MR. CONNOLLY: I will put this in evidence.

THE COURT: Does that mean he can still put it in and make a finding for the defendant at the close of your case?

MR. MAHONEY: I will not raise that, Your Honor.

THE COURT: All right. Is there any objection?

It will be admitted.

THE DEPUTY CLERK: Hartford Exhibit No. 2 marked in evidence.  
(Whereupon, Defendant Hartford's Exhibit No. 2 received in evidence.)

BY MR. CONNOLLY:

Q. I direct your attention to your answer to Interrogatory No. 3, the question to which that is an answer says as follows:

[142] "State whether during the year 1959 Lesmark, Inc. requested either Harris & Ogus, Inc. or Hartford to provide a certificate evidencing insurance coverage to any third party."

Now, will you read your answer? A. Yes.

Q. Read "A". A. "A". "February 11, '59, Pepco issued certificate of insurance. (B) Approximately June '59 Bladen Realty Corporation issued certificate of insurance. (C) Approximately May of '59 Rockville Volunteer Fire Department issued certificate of insurance. (D) July 20th, '59, Walter S. Charron and Harris & Ogus, Incorporated advised affiant issued certificate."

Q. All right. Now, the next job for which you got a certificate of insurance, calendar-wise, as to the Pepco job, would appear to be the one in May '59, the Rockville Volunteer Fire Department; is that correct? A. That's correct.

Q. Did you have a contract to construct a new building for the Rockville Volunteer Fire Department? A. It was in addition to the present building, yes, sir.

[143] Q. Now, do you have that contract here? A. I don't have it here.

Q. Did that contract contain specifications requiring you to take out certain insurance coverage? A. Yes, it did.

Q. Did you call Harris & Ogus with respect to those specifications? A. Yes.

Q. And who did you speak to on this occasion? A. I don't know

who exactly.

Q. Do you recall -- A. It would be either Mrs. Taylor or Mr. Feinman.

Q. You are saying that that is the people whom you usually spoke to? A. That's true.

Q. Could -- do you have any recollection as to whether you went into Harris & Ogus, or whether either of those people came out to your place of business? A. I only went to Mr. Feinman's office only once, always he came out to my office. He lived out in Silver Spring.

Q. So, you requested insurance coverage for this particular job? [144] A. That's correct.

Q. And the next one is in June '59, Bladen Realty Corporation. What kind of a job did you do for Bladen Realty Corporation? A. We built a new warehouse for them.

Q. Where? A. Out in the central industrial area.

Q. In the what? A. In the central industrial area.

Q. Where is that? A. That is out on Central Avenue and 85th Avenue.

Q. Prince George's County? A. About a half mile south of the Beltway towards the District.

Q. Is that in Prince George's County? A. Yes, sir.

Q. Did that contract contain specifications calling for certain insurance coverage? A. Yes, sir.

Q. When you entered into that contract did you communicate with Harris & Ogus? A. Yes, sir.

Q. How did they learn about the specifications? [145] A. They were either read to them or they came over and read them themselves.

Q. You don't remember? A. I know we got a certificate, they saw the specifications.

Q. All right. Do you remember how they happened to learn of the specifications? A. By telephone conversation.

Q. With whom? A. With myself or my secretary.

Q. Do you remember which it was? A. It's very -- I would say it must have been myself, but I just can't say exactly.

Q. At any rate, at this time you wanted insurance coverage to meet the specifications on that job, is that correct? A. That's correct.

Q. The next one is July 20, 1959, Walter S. Charron. Now, did you call Harris & Ogus? A. Yes, sir.

Q. Did you personally do it? A. I can't remember.

Q. This must have been a matter that stuck in your [146] mind, did it not, because just 10 days later, on July 30, 1959, at the job site when a couple buildings were falling in the hole Harry Harris told you, you didn't have insurance coverage? A. Let's correct it. Harry Harris mentioned it to me, but I had spoken to Mr. Feinman and he assured me that he had called Hartford to get this insurance for us.

Q. Now, my point of the matter is this, this is the question: Do you recall when you have answered here under oath, that on July 20, 1959 you mentioned Walter Charron's job, do you recall with whom you discussed the specifications on the Walter S. Charron job? A. I can't positively say, it's so long ago, if this was yesterday I could tell you, yes, I spoke with such and such a person, but I just don't remember. I am under oath.

Q. Even though this was the very job that entailed a long law suit and loss you still haven't been able to recall? A. My recollection would be that we called, it either I or my secretary called Mr. Feinman to get us the insurance for this particular job.

Q. All right. Now, I am going to show you Defendant Hartford's Exhibit No. 3 and ask you if this package of [147] documents I hand you which has been so marked is the contract between Walter Charron and Lesmark, Inc., plus the specifications?

THE COURT: That is on the I Street job, is it?

MR. CONNOLLY: Yes, Your Honor.

THE WITNESS: This is the contract and the specifications.

BY MR. CONNOLLY:

Q. The contract is dated July 17, 1959, correct? A. That is correct.

Q. It bears your signature on behalf of Lesmark, Inc., right, you signed as President? A. That's correct.

MR. CONNOLLY: I think it would be well to have the specifications marked 3-A, Your Honor, and the contract 3.

THE COURT: All right. It will be so marked.

THE DEPUTY CLERK: Hartford Exhibit 3 and 3-A marked for identification.

(Whereupon, Hartford's Exhibit No. 3 and No. 3-A were marked for identification.)

MR. CONNOLLY: May we have the same understanding [148] as to these?

MR. MAHONEY: Yes.

MR. CONNOLLY: May I offer these, if the Court please?

THE COURT: They will be admitted without objection.

THE DEPUTY CLERK: Hartford's Exhibit Nos. 3 and 3-A received in evidence.

(Whereupon, Hartford's Exhibits Nos. 3 and 3-A were received in evidence.)

\* \* \*

BY MR. CONNOLLY:

Q. Now, Mr. Abrams, coming back, in answer to your interrogatory you specified July 20 as the date on which -- let me get the accurate answer.

[149] The question was:

"State whether during the year 1959 Lesmark requested either Harris & Ogus or Hartford to provide a certificate providing insurance coverage of insurance coverage to any third party."

In 3(D) you answered:

"7/20/59 Walter S. Charron -- Harris & Ogus, Inc. advised affiant

it issued certificate."

THE COURT: What?

MR. CONNOLLY: Interrogatory 3.

And 3(d) you answered:

"July 20, 1959, Walter S. Charron, Harris & Ogus advised it would issue a certificate."

BY MR. CONNOLLY:

Q. Who at Harris & Ogus advised you that? A. I believe it was Mr. Feinman.

Q. Was that the day on which Mr. Feinman read the specifications? A. Oh, no, it was probably after that, after that period of time. He read the specifications before that time.

Q. The contract wasn't entered into before the 17th? A. That's correct.

Q. So, there wouldn't be any point for him to read it before the 17th, would there? [150] A. No, there wouldn't be any point to reading it unless -- that's correct.

Q. Once you got the contract then there came a time when you had to get insurance to comply with the specifications in the contract, and then Mr. Feinman read the specifications, is that right? A. Well, prior to the actual signing of the contract I had met Mr. Charron and he told me that he would be giving me the contract.

Q. All right. Let's give us a leeway, would you say a couple of weeks prior to the 20th? A. I would say a week or so at least before I knew I was going to get the contract.

Q. Mr. Feinman read the specifications? A. That's right.

Q. I am going to show you Defendant Hartford's Exhibit 3-A. 3-A are the specifications, correct? A. That's correct.

Q. Page 9, numbered paragraph 13 provides for a title known as insurance; is that correct? A. That's correct.

Q. And there are five provisions under the title insurance; is that not correct, A, B, C, D and E? [151] A. That's correct.

Q. Under A:

"The contractor shall maintain such insurance as will protect himself and the owner from direct, assumed and contingent liability for claims for damages, for personal injuries, including death, and/or damage to property, which may arise from operations under this contract whether such operations may be by himself or any sub-contractor or anyone directly or indirectly employed by either of them. Such insurance shall be in such companies as may be selected by the owner and certificates of such insurance shall be filed with the owner. The amounts of public liability policy shall be \$50,000 for injury to one person and \$100,000 for the injury to more than one person in each accident. The amount of property damage insurance shall be \$150,000."

Correct? A. That's correct.

Q. Now, were you furnished a certificate of insurance, or copy of the certificate of insurance in compliance with Paragraph 13(a)? A. I was, during the construction, yes, I was.

[152] Q. During the construction of the Walter Charron property you were furnished a certificate of insurance? A. Yes, I was.

Q. And I assume then you turned it over to Walter S. Charron? A. That's correct.

MR. CONNOLLY: Mr. Mahoney, will you produce it?

MR. MAHONEY: I don't have it.

MR. CONNOLLY: You never got it; is that correct?

MR. MAHONEY: I don't know where it is, or whether it was ever sent. How would I know that?

BY MR. CONNOLLY:

Q. Do you have a copy of it? A. Mr. Barker had copies of all the insurance certificates.

Q. Well, Mr. Barker is supposed to have produced those, but he didn't produce the one for Charron. A. I had to get a certificate in order to continue the job after the accident, and it was with another company.



Q. You did not get a certificate in compliance with this provision prior to the loss? A. Not prior to the loss. I did afterwards.

[153] Q. All right. A. I thought we did.

THE COURT: Then, I understand that prior to July 28, 1959, you got no certificate of insurance from any company with regard to the insurance required in Paragraph 13(a) of the specifications, which is Hartford Exhibit 3-A; is that correct?

THE WITNESS: May I answer that question without a yes or no, sir? We thought we did have insurance, but we did not have.

BY MR. CONNOLLY:

Q. We are not interested in your thoughts, Mr. Abrams. The Judge's question is very clear.

THE COURT: The question is: Did you have a certificate of insurance?

THE WITNESS: I had a certificate of insurance, but not taking care of this paragraph (a). I found that out, but at the time I didn't know I didn't have any.

BY MR. CONNOLLY:

Q. Look, Mr. Abrams, let's go over this very clearly. A. Yes.

Q. Paragraph 13(a) required you on behalf of the Charrons to produce a certificate of insurance evidencing [154] insurance coverage as specified in that paragraph; isn't that right? A. That's correct.

Q. As one of the conditions of the contract, wasn't it? A. That's correct.

Q. Now, were you provided with a certificate of insurance evidencing the insurance coverage provided by this contract made out to Walter S. Charron?

MR. MAHONEY: You mean before?

BY MR. CONNOLLY:

Q. Before the date. A. Before the date, I was not.

Q. All right. Thank you.

Now, subsequently, after the loss, you were provided -- A. That's

correct.

Q. With a certificate, because then you took out insurance to comply with this?

MR. MAHONEY: I object to that question.

BY MR. CONNOLLY:

Q. You got insurance, did you not, to take care of this paragraph? [155] A. I thought I had insurance at that time, I didn't, and I got the insurance, yes, sir.

Q. All right. Did you read these specifications yourself? A. Yes sir.

Q. Did at any time in the history of your company, did you ever ask for property damage insurance in \$150,000 as required by these specifications? A. This I believe was the first job that asked me for \$150,000.

Q. The Pepco job required only \$100,000; is that right? A. That's correct.

Q. And the certificate, a copy of which you got, but was sent to Pepco, evidenced insurance coverage of only \$100,000 property damage; is that correct? A. That's correct.

Q. So, unless something were done you knew that the Pepco coverage wouldn't satisfy 13(a); isn't that correct? A. Well, I knew Pepco would not satisfy that.

Q. Correct. Now, 13(b) says:

"The contractor shall maintain workmen's compensation insurance and file with the County [156] and City authorities and the owner certificate thereof."

Did you do that? A. Yes.

Q. Where did you get the certificates? A. Well, that part of the certificate I asked Harris & Ogus' office to give me.

Q. All right. So, that can we say as of July 28, 1959 no certificates in compliance with 13(b) had been filed? A. Well, there was no certificate issued to Charron prior to that date.

Q. All right. (c):

"The contractor shall also require that each of his sub-contractors shall carry proper and adequate policies, covering workmen's compensation and public liability as well as all liability assumed under the contract, covering the contractor and the owner."

Now, were there any sub-contractors on this job? A. Yes, there were.

Q. How many? A. I would say there were probably fifteen.

Q. Now, having read these specifications you knew [157] your obligation was to require each of those sub-contractors to carry proper and adequate policies covering workmen's compensation and public liability as well as liability assumed under the contract covering the contractor, you, and the owner; is that right? A. Yes.

Q. Now, what steps did you take to comply or to assure yourself of compliance with Provision 13(c)? A. Well, we requested all sub-contractors, this is what we do all the time.

Q. Let's do it this time. A. This is a procedure we had been doing for 13 years.

Q. If that is so, and you did it in this, say with respect to this job

A. With respect to this job we requested our sub-contractor to give us a certificate of insurance.

Q. When? Before you undertook the job? A. Before he undertook to do his particular work.

Q. Now, was any sub-contractor undertaking to do any work on this job at 1919 I Street before July 28, 1959? A. Yes, one sub-contractor.

Q. Which sub-contractor was that? A. Well, it was an excavator.

[158] Q. All right. Did you require him to give --

THE COURT: You just testified earlier that there was no sub-contractor excavating on this building.

THE WITNESS: Well, sir, what I mean is I hired a man to do excavation by the hour. Would you call him a sub-contractor or would

you call him a hiring?

THE COURT: It isn't what I would call him, it is what you called him. At one time you said you had not sub-contractor and now you say you did.

THE WITNESS: I hired a bulldozer and man to operate on an hourly basis. This was a contractor, or sub-contractor that was performing the work. I was hiring him on an hourly basis.

THE COURT: All right. Go ahead.

BY MR. CONNOLLY:

Q. What was this bulldozer operator doing? A. He was excavating for the building.

Q. He was digging a hole, wasn't he? A. That is correct.

Q. All right. Now, did you require that bulldozer operator to comply with Paragraph 13(c) of the contract? A. I --

Q. Did you? [159] A. I covered him on some of the insurance, but I didn't specifically -- I don't remember.

Q. What do you mean, you covered him? A. I don't remember.

Q. Did you tell anybody at Harris & Ogus that you had hired a bulldozer operator to dig a hole in the 1919 I Street property? A. I don't remember specifically telling them anything like that.

Q. Sub-paragraph (d) of Paragraph 13 says:

"Original policies taken out in the name of the Sub-contractor shall be delivered to the contractor at the time the contract is signed."

Now, with respect to the bulldozer operator, was any original policy of his delivered to you? A. I don't remember.

Q. Paragraph 13(e) says:

"Should any person or persons or property be damaged or injured, including injuries causing or resulting in death, by the contractor, or by any sub-contractor, or by any person or persons employed under them, in the course of the performance by them of this agreement, or otherwise resulting [160] from any action or operation under this agreement, whether by negligence or otherwise, said contractor shall alone

be liable, responsible and answerable therefor, and does hereby agree, to and with the said owner, to hold harmless and indemnify the owner of and from all claims, suits, actions, costs, counsel, fees, expenses, damages, judgments, or decrees by reason thereof."

Now, prior to 1959 did you ever have contractual liability insurance coverage?

MR. MAHONEY: If he knows what that means.

THE WITNESS: I don't think we did.

BY MR. CONNOLLY:

Q. Now, you know that when you enter into an agreement like this, to hold harmless the owner, that that is an assumed obligation by contract, is it not? A. Yes.

Q. Did you ever request anybody to provide you with contractual liability? A. I did start it in 1959, I believe, with the Pepco job, and the Bladen job.

Q. The fact of the matter is, is it not, Mr. Abrams, that what you did in the course of your business was since [161] your jobs changed character and since the kind of insurance which was required would change from job to job, you would buy insurance for the particular job? A. No, sir.

Q. It was not.

Now, there were addressed to you again these interrogatories which have been marked Defendant's No. 4, I think -- is that not so? I think maybe interrogatories and the answers ought to be marked No. 4, Your Honor, because you can't understand the answers without knowing the questions. We have so far marked only the answers.

THE COURT: Well, bring it over and let her mark the questions, too.

MR. CONNOLLY: I think that is in the other book.

THE DEPUTY CLERK: Defendant Hartford's Exhibit No. 4 marked for identification, interrogatories.

(Whereupon, Interrogatories were included in Defendant Hartford's

Exhibit No. 4, Answers to Interrogatories, previously marked for identification at page 121.)

BY MR. CONNOLLY:

Q. Mr. Abrams, the first interrogatory provides as [162] follows: In paragraph three of your cross-claim against Hartford Accident and Indemnity Insurance Company hereinafter called Hartford you allege that Harris & Ogus, Inc.:

"Agreed to secure insurance for said defendant and third party plaintiff, Lesmark, Inc., which would pay on behalf of the insured all sums which said defendant and third party plaintiff shall become legally obligated to pay as damages for all bodily injury or injury to or destruction of property, including the loss of use thereof, caused by said defendant and third party plaintiff; said insurance was to provide coverage to the extent of \$100.00 for property damage, and was to include the defense of any suit against the insured alleging such damage, and to pay all costs incurred by the insured."

Accordingly, you were to answer the following:

"(A). State the date on which Harris & Ogus agreed to furnish insurance."

What is your answer? A. Can you tell me which one you are talking about?

Q. 1(a). A. February 11th, 1959, or several days prior thereto. [163] 1(b) says:

"State the name, address and position of responsibility of the person who on behalf of Lesmark requested this insurance." A. Michael M. Abrams, President of Lesmark, Incorporated.

Q. Not your secretary? A. That's right.

Q. (Reading) "(c). State the form of request, whether oral or in writing." A. I have "oral."

Q. (Reading)

"(d). If oral, state whether any contemporaneous memorandum, notation or record was made of that fact of the request." A. "Was in-

formed by Harris & Ogus, Incorporated that it had changed its records to reflect the new coverage."

Q. Who informed you? A. Harold Feinman, Office Manager; Harry Harris & Walter Ogus, partners in Harris & Ogus, Inc. all advised affiant that change was made.

Q. I have departed for the moment, sir -- I am exploring your answer (d). I am not going on to the (e) question. I haven't even put the question on (e) to you as yet.

[164] You said in (d):

"Was informed by Harris & Ogus, Inc., that it had changed its records to reflect the new coverage."

Who informed you at Harris & Ogus? A. Harold Feinman. Isn't that the answer?

Q. I am not asking you about the answer to the next question. A. All right. Harold Feinman.

Q. All right. The next question is (e):

"State the name, address and position of responsibility of the person who made any such contemporaneous memorandum, notation, or record." A. (Reading)

"Harold Feinman, Office Manager, Harry Harris and Walter Ogus, partners in Harris & Ogus, Inc., all advised affiant that change was made."

Q. Now, I haven't heard it until now in these proceedings that Harry Harris informed you and Walter Ogus informed you. When did you discuss it with each of those gentlemen? A. Well, it's been so long, I don't remember when I spoke with them. I think the answer -- it means these two [165] are partners in the company, it says partners in Harris & Ogus, Incorporated.

Q. If that is the way to read it, what do you do with the word "all"? A. Well, at the time I had spoken to Mr. Harris and Mr. Ogus on different occasions. I don't remember exactly when, but they informed me what I was being covered for.



Q. What did they say to you? A. They said I was being covered on my job according to what I was asking for.

Q. What were you asking for? A. I was asking to be covered by the specifications, whatever job I was doing, whatever was required.

Q. It says in (f):

"State whether Lesmark, Inc. will provide Hartford with a copy of any writing pertaining to said request."

Then (g) says:

"State the manner in which Harris & Ogus, Inc. agreed to secure insurance of the type and character indicated in the above-quoted language."

And the answer is? A. Shall I read it?

[166] Q. Yes. A. "They said you are covered."

Q. Now, I take it the word "they" refers to the three people who informed you that the change was made, namely Harold Feinman, Harry Harris and Walter Ogus? A. I would say one of them said this to me.

Q. You can't use "they" for one, can you? A. I don't really remember who it was, whether it was two of them, or three of them. But they informed me.

Q. Under what circumstances? A. Well, I had spoken to all three of them on different occasions in regard to insurance.

Q. They told you generally you are covered for your job? A. They would inform me, that's why I was hiring them to cover me on my insurance.

\* \* \*

[167] Q. (Reading)

"(h). State whether the response of Harris & Ogus, Inc. was oral or in writing."

How did you answer that? A. "Both."

Q. All right. Now, what was the written material which showed that you were covered? A. I believe that I received, or Mr. Feinman showed me a memorandum that had been sent to Hartford to provide the

proper insurance for us.

Q. When did he say that, when did he show you that? A. I saw that at a later date, but there was a memorandum sent.

Q. You didn't see it before the loss? A. I didn't see it until after the loss, but I saw it was dated before, prior to the loss.

\* \* \*

[168] Q. I show you Hartford Exhibit No. 1 and ask you if this is the memorandum you refer to? A. Yes, this is one of the type. I mean this is back in February. There were three or four of them like this.

Q. You saw three or four like this? A. I saw a few of them that I had seen.

Q. This refers to the Pepco job, doesn't it? A. This refers to the Pepco job.

Q. Coming down to Interrogatory (k):

"State the date on which Harris & Ogus, Inc. agreed to provide insurance of the type heretofore quoted in your cross-claim."

How have you answered that? A. "February 11, 1959."

\* \* \*

[169] Q. Now, (1):

"Describe in detail what documentation is in your possession evidencing the fact that Harris & Ogus, Inc. agreed to secure such insurance."

How have you answered that? A. "Certificate of insurance issued to Pepco."

Q. Is that the only documentation in your possession? A. I would say yes.

Q. Now, from time to time did you receive endorsements to your policy with Hartford covering liability under your contractor's policy with Hartford? A. Yes.

Q. Where are those? A. I believe they are in the record. Here are some endorsements (indicating).

THE COURT: Referring to what?

BY MR. CONNOLLY:

Q. These aren't yours, right?

[170] THE COURT: Wait a minute. What is he referring to, for the record.

MR. CONNOLLY: 2-C.

THE COURT: Aetna's 2-C?

MR. CONNOLLY: Yes, Your Honor.

THE COURT: All right.

THE WITNESS: We have copies of these endorsements. We have received copies of them.

BY MR. CONNOLLY:

Q. You did receive copies of those endorsements? A. Yes.

Q. Do you want to take your time and look through them to make sure? A. One endorsement was Lesmark, Incorporated, was the name to be changed.

Q. Did you get that endorsement? A. Yes.

Q. Did you get it before the loss in this case? A. Yes.

Q. All right. How about Endorsement No. 3? A. I got Endorsement No. 3.

Q. Did you get it before the loss in this case? A. Yes, I got it sometime in February, '59.

[171] Q. How about Endorsement 4?

THE COURT: What does endorsement 3 say?

THE WITNESS: Sir, Endorsement 3 says:

"Include division 4 products general contractory-building construction (not prefabricated) buildings."

MR. CONNOLLY: It is also the one, Your Honor, that says:

"It is agreed that with respect to such insurance as is afforded by the policy, the limit of the company's liability shall be increased to read as stated herein, but only as respects the insured's operations at Potomac Electric Power Company, 10th and E Streets, Northwest, Washington, D.C."

THE COURT: All right.

BY MR. CONNOLLY:

Q. Look at Endorsement No. 4. A. It's also another endorsement which I received.

Q. Did you get that before the loss? A. Yes, I did.

MR. CONNOLLY: No further questions.

\* \* \*

[172] REDIRECT EXAMINATION

BY MR. MAHONEY:

Q. May it please the Court:

Mr. Abrams, what assets does Lesmark, Inc. have now? A. I believe it has very little assets.

Q. What do you mean by that? A. Less than \$100.00.

Q. Is it a functioning corporation now? A. No, sir.

\* \* \*

RECROSS EXAMINATION

BY MR. MARTELL:

Q. Was Elmer Stokes your excavation contractor? A. I believe that was the name.

THE COURT: On what job?

BY MR. MARTELL:

Q. On the I Street job? A. Yes, sir.

\* \* \*

[173] MR. MAHONEY: If Your Honor please, I have no further testimony at this point. I did want to make the position of the garnishor Aetna, clear with respect to its claims.

Your Honor will recall early in the case I was asked whether I would concede whether if there were no -- that the policy itself as written did not provide for excavation coverage, to which I said I did not feel I could. On closer examination of the clause which is Clause L, I feel that this language is not entirely clear as to whether or not excavation

is covered, and moreover, I think that if you examine this Clause L, this -- in light of the declarations there would be serious doubt as to whether excavation would be included.

I would like to read that clause.

[174] THE COURT: Whether it is included, or excluded?

MR. MAHONEY: Whether it is excluded. My position is not only that if this contract can be interpreted to exclude excavation, that this significant omission should have been pointed out and was not by the agent, but I also rely on a point that this contract can be construed as written to cover excavation.

THE COURT: Well, isn't that something that you should cover in your final arguments in the case?

MR. MAHONEY: I just wanted to make reference to certain language in Clause L, and then I will rest.

\* \* \*

[175] THE COURT: In Aetna's Exhibit 2, right?

MR. MAHONEY: Yes, Your Honor.

THE COURT: All right.

[176] MR. MAHONEY: Which reads, under Coverage C, and we go back to Coverage B, and that is the property damage liability, and it says:

"With respect to Division I --" and Division I is ownership, maintenance, use of premises and all operations. It says:

"Of the definition of hazards, to injury to destruction of any property arising out of (1) blasting or explosion, other than the explosion of air or steam vessels, piping under pressure, prime movers, machinery, or power transmitting equipment, or (2) the collapse of or structural injury to any building or structure due (a) to excavation, including burrowing, filling, or back-filling in connection therewith, or to tunneling, pile driving, coffer-dam work or caisson work, or (b) to moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof; provided, how-

ever, part (1) or part (2) of this exclusion does not apply to operations stated, in the declarations or in the company's manual, as not subject to such part of this exclusion."

[177] We go back to the declaration and see that what is stated is construction operations.

And the garnishor rests, Your Honor.

THE COURT: Wait a minute. Provided however --

MR. CONNOLLY: Is not subject to the exclusion, is the rest of the phrase.

MR. MAHONEY: Which means the construction operations which involve excavation to me --

MR. CONNOLLY: As stated in the declarations.

THE COURT: I don't follow you on that Mr. Mahoney.

MR. MAHONEY: The "provided however" clause says (1) and (2) of the exclusion, the way I interpret it, (2) being the structural injury due to excavation, does not apply to operations stated in the declarations. Now, the operations stated in the declarations are construction operations and I believe a reasonable interpretation of that would be exactly what the man is doing, building a building.

THE COURT: Where does it say this in the declarations?

MR. MAHONEY: Right down here, if I may point to it, Your Honor, Division III, construction operations and Division I says, see schedule attached.

THE COURT: What were you saying about that, [178] Mr. Connolly?

MR. CONNOLLY: I was saying Mr. Mahoney stopped reading the sentence a little too fast. He says that the exclusion does not apply because of the words, "provided however," part (1) or part (2) of the exclusion shall not apply to operations stated, and he would stop there, and in the declaration construction operations are stated which obviously would include building a building, which obviously would include excavation.

THE COURT: I see, as not subject to such exclusion.

MR. CONNOLLY: The declarations do not say as they would say that construction operations are not subject to Exclusion L.

THE COURT: I see your point.

MR. CONNOLLY: He stopped reading the sentence too early.

MR. MAHONEY: I don't follow that.

THE COURT: Well, just read it again.

MR. CONNOLLY: Read it as if the commas aren't there, and it will become clear to you.

MR. MAHONEY: It would be nonsensical if it were interpreted that way, there wouldn't be any reason for putting the language in there. It says part (1) and (2) [179] which deals with excavation was designed to cover this manufacturers and contractors liability policy where there were no construction operations, because this was an extension of the policy. But what they say is that if the manufacturer or contractor is doing his own business and apparently excavation is part of his business, then it is not excluded. I think that is a reasonable interpretation.

THE COURT: If it so says on the declaration.

MR. MAHONEY: The declaration says construction operations.

THE COURT: It doesn't say anything about including excavation.

MR. MAHONEY: No, it does not, but I think any ambiguity can be resolved against the insurance company.

THE COURT: I don't see any ambiguity.

\* \* \*

[180] MR. CONNOLLY: I would like to make a motion, Your Honor.

MR. MARTELL: So, would I. I don't know which one is number one.

\* \* \*

MR. MARTELL: On behalf of the Defendant Walter Ogus, I move the Court for a finding at this time, at the conclusion of the Plaintiff's case, \*\*\*

\* \* \*



[182] MR. MARTELL: \*\*\* Your Honor, I take [183] Your Honor will deny my motion?

THE COURT: I will deny it.

\* \* \*

MR. CONNOLLY: Well, I would prefer to see this record decided on a factual basis than I would a legal basis, because it seems to me it makes for a lot cleaner record. We have gone this far, I don't think we have much more testimony.

THE COURT: Then, you don't make any motion?

MR. CONNOLLY: I do.

THE COURT: Then, I will deny it.

MR. CONNOLLY: I ask Your Honor to reserve it.

THE COURT: All right.

\* \* \*

MR. MARTELL: Your Honor, I think with the introduction of the release, this defendant will rest.

THE COURT: All right. Any objection to the release? What exhibit number was that?

THE DEPUTY CLERK: Ogus Exhibit No. 2 for identification.

THE COURT: All right. Ogus' No. 2 is admitted.

(Whereupon Defendant Ogus' Exhibit No. 2 was received in evidence.)

[184] THE COURT: What was Ogus' No. 1?

THE DEPUTY CLERK: Letter from Mr. Martell.

MR. MARTELL: Yes, that was a letter from me to Sam Barker.

THE COURT: Has that been offered?

MR. MARTELL: I offer that at this time, Your Honor.

THE COURT: Any objection?

MR. MAHONEY: I would object to the release as having an effect on Aetna, but for the purposes of the introduction into the case I would have no objection on that, or the letter.

THE COURT: You don't have objection to it being admitted, you

just say it doesn't apply to Aetna?

MR. MAHONEY: Yes, Your Honor.

(Whereupon, Defendant Ogus' Exhibit No. 1 was admitted into evidence.)

\* \* \*

[185] MR. CONNOLLY: Mr. Feinman take the stand.  
Thereupon,

HAROLD FEINMAN

previously sworn, was called as a witness and testified further as follows:

THE COURT: Your full name is what?

THE WITNESS: Harold Feinman.

\* \* \*

DIRECT EXAMINATION

BY MR. CONNOLLY:

Q. Mr. Feinman, prior to February 11, 1959 did you read such portions of the specifications of the 23rd Street Pepco Sub-station as called for insurance coverage for either Michael Abrams or Lesmark, Inc.? A. I don't recall reading the specifications.

Q. Do you recall going to Mr. Abrams' office? A. For that specific job?

Q. Yes. A. No, I do not.

Q. Now, coming to May of 1959, did you read any [186] specifications providing for insurance on the construction job involved in the Rockville Volunteer Fire Department? A. I don't recall reading any specifications for that job.

Q. Do you recall going to Mr. Abrams' office with respect to that job? A. I don't recall specifically going there.

Q. Do you recall him coming to Harris & Ogus to discuss that job with you? A. No, I do not recall it.

Q. With respect to the Bladen Realty Corporation job in June 1959,

did you examine any specifications? A. I don't specifically remember hearing a job with the name of Bladen Realty. I think if this is the same job as the Dixie Janitor, then I would recall that.

Q. This was a job out in Prince George's County, the construction of a warehouse. A. The only one I recall is the Dixie Janitor warehouse.

Q. Where was that located? A. I don't recall. I know we issued a certificate for that.

Q. Well, the address on the certificate shows 210 Massachusetts Avenue, Northwest, doesn't it? [187] A. Right.

Q. That wouldn't have been in Prince George's County?

MR. MARTELL: That is the main office of the building.

BY MR. CONNOLLY:

Q. Now, how about the particular job at 1919 I Street, did you read the specifications pertaining to that job? A. I don't recall ever even seeing any of the specifications on the I Street job.

Q. The specifications here are Defendant Hartford's Exhibit 3-C, attached to Exhibit 3, which is the contract. A. I don't recall.

Q. And specifically, I ask you to examine page 9, insurance provisions, and have you ever seen those before this case? A. I have never seen this entire folder.

Q. Did you know what the contractual insurance obligations were? A. No, I did not.

MR. MAHONEY: On what job?

BY MR. CONNOLLY:

Q. On the Charron job, 1919 I Street? A. No, I did not.

[188] Q. There is a contractual obligation under this policy, is there not? A. Well, from what you read before, just listening to you, there was.

Q. Clearly, you never picked that up, or never made any attempt to insure that? A. I never saw the particular thing.

\* \* \*

[189] MR. CONNOLLY: We have had the witness, I believe, previously identify his answers to interrogatories. If that is so, I won't bother asking the question again. I would like the interrogatories and answers addressed to Harris & Ogus, signed by Harold Feinman, to be given Hartford's next exhibit number.

\* \* \*

THE DEPUTY CLERK: No. 5, Your Honor.

(Defendant's Hartford's Exhibit No. 5 marked for identification.)

MR. CONNOLLY: Your Honor, at this time I specifically want to call Your Honor's attention to Interrogatory No. 2 \*\*\*

\* \* \*

[190] MR. CONNOLLY: We rest, Your Honor.

THE COURT: Well, you'd better give the other side the opportunity to examine the witness.

MR. CONNOLLY: I have nothing further, Your Honor, and don't intend to put on any other witnesses.

\* \* \*

[191] THE COURT: \*\*\* I will admit them.

(Whereupon, Defendant's Hartford's Exhibit No. 4 and 5 were received in evidence.)

\* \* \*

#### CROSS EXAMINATION

BY MR. MAHONEY:

Q. May it please the Court:

Mr. Feinman, you testified that you -- did you say you didn't recall reading the specifications of the Charron job, or you did not read them? A. Yes, I did. I don't recall reading them.

Q. You may have read them and don't recall it now? A. Well, in stating I don't recall, I can't honestly say.

Q. Were the contents of these specifications made known to you, the insurance provisions? [192] A. No. Again I would say I couldn't recall, but I don't know, sir.

Q. Now, in your dealings with Mr. Abrams, when he had a particular job, was it your experience that he would call you and tell you what the job was all about? A. No, it was not.

Q. Wasn't that what you so testified to before? A. I don't believe so.

Q. Are you saying now when he had a job he didn't call you and tell you what the job was about? A. He might have called and said, please issue certificate for a specific job.

Q. Now, wouldn't you have to obtain information from him in order to issue a certificate? A. Under normal conditions most policies, all that would be involved would be bodily injury and property damage aspects of the policy.

Q. On Plaintiff's Exhibit No. 7, which is the Pepco job, you provided completed operations coverage? A. That's correct, sir.

Q. You provided property damage liability? A. That is correct, sir.

Q. And you knew from Mr. Abrams, or from the contract [193] as to what was required, what the insurance requirements were? A. Correct.

Q. And based thereon you issued a certificate to Pepco? A. That's because Pepco would not let him start unless he produced that and made the information -- made it aware so we would know about it.

Q. But you made a judgment as to what the insurance needs were for this job, you told him what he needed, you got the insurance and issued the certificate? A. Pepco made the judgment that this is what he would need in order for him to do the job, and we provided it.

Q. You misunderstood my question.

You made the decision as to what was required from an insurance standpoint to satisfy Pepco's requirements; is that right? A. Pepco outlined their requirements.

Q. Then he came over and said, what insurance do I need? A. Based on requirements as Pepco indicated we said: This is what you

need.

Q. That was my question to you.

So, you determined the insurance needs? [194] A. That's correct.

Q. Then you furnished the certificate? A. That's correct, sir.

Q. All right. Now, you also testified that when you ordered property damage liability which was prompted by the Pepco job you ordered it to be endorsed on the blanket policy also? A. That's our interpretation.

Q. And Mr. Abrams was so informed? A. I couldn't say whether he was informed directly. In other words, when an assured normally gives us an order, it's understandable that we tell them it's covered.

Q. That you covered it? A. Right.

Q. And he ordered that in 1959? A. Based on our records.

Q. Now, the Dixie Janitor Supply house job which followed the Pepco job, how did you know what insurance to provide for that job? A. I can't specifically say it was I who knew or whether his secretary called Mrs. Taylor and said, issue a certificate of insurance.

Q. Before you issue a certificate of insurance, you [195] have got to know what you are certifying, don't you? A. We were certifying the policy -- normal policy coverages as we know it.

Q. You have got to certify what the owner wants certified, don't you? A. We just certify to the individual policy coverage.

Q. But you have to know what he is doing in order to certify what insurance he needs? A. 100 per cent, it doesn't apply we have to know what he's doing.

Q. Would you issue a certificate to Dixie Janitor warehouse without knowing what Lesmark was doing at the Dixie Janitor warehouse? A. We would issue a certificate to anyone requiring it showing what coverage there was under the policy. If this was not sufficient as far as the one who got the certificate, they would so notify the individual, or us, at which point we would go into it further.

Q. This is dated June 18, 1959, so what you certified here to Carl Himmelfarb of Dixie Janitor Supply warehouse was that Lesmark, Inc. had in effect at that time \$100,000 property damage? A. That's correct, sir.

[196] Q. And that property damage coverage you also included that the expiration date was August 26, 1959; is that right? A. Well, if that's what it says.

Q. Would you like to see it? A. No, that's okay.

Q. Did you know anything about the Rockville Volunteer Fire Department job? A. Again, I can't specifically say that I knew about it.

Q. You issued a certificate dated June 18, 1959? A. Our office issued a certificate.

Q. That certificate stated Lesmark, Inc. had property damage liability of \$100,000? A. That's correct, sir.

Q. Which expired August 26th, 1959? A. That's right.

MR. MAHONEY: I have no further questions.

MR. MARTELL: No further questions, Your Honor.

#### REDIRECT EXAMINATION

BY MR. CONNOLLY:

Q. You said you requested blanket property insurance coverage?

[197] A. Based upon our interpretation of the memorandum.

Q. Based upon your interpretation of your own records? A. That's right.

Q. Now, where is the record which shows you requested general property damage? A. I refer to the February '59 memorandum.

THE COURT: That is Hartford's Exhibit No. 1, I think.

BY MR. CONNOLLY:

Q. You say based upon your interpretation of this you requested general property damage? A. Right.

Q. Was there any limitation in the amount of property damage which you could bind at this time, according to your interpretation?



A. At that particular time I was not aware of any limitation on property damage.

Q. Could you insure property damage without a survey of the housing? A. Could I insure? I would say as respects normal property damage, referring to normal operations of an individual, I had no knowledge of not being able to bind the property damage. [198]

Q. The fact of the matter is that you did prior to this loss order a survey of property damage, did you not? A. Prior to this loss?

Q. Correct. A. Well, I don't recall personally doing it.

THE DEPUTY CLERK: Hartford's Exhibit No. 6. marked for identification.

(Whereupon, Defendant Hartford's Exhibit No. 6 marked for identification.)

BY MR. CONNOLLY:

Q. Did you order a survey of hazards on July 17, 1959? A. Unless I see the rest of the survey of hazards I couldn't tell you. This just appears to be a face of a normal four-top sheet.

MR. CONNOLLY: Let's substitute this, the original for the copy, Hartford's 6.

THE DEPUTY CLERK: Hartford's 6 for identification is substituted.

BY MR. CONNOLLY:

Q. Hartford's Exhibit No. 6 bears your signature in the lower right hand corner, does it not? [199] A. This is not a survey of hazards of the insured's operations.

Q. What is it? A. This is a survey of hazards of carrying an office liability policy only.

Q. Is that in connection with a policy that was ordered at about this time? A. I only would have to assume so.

Q. How about the OTS policy? A. Could be, sir.

Q. Specifically, at or about that time, the time on the OTS policy was ordered, did you specifically request Hartford not to put property

damage on the MCS policy?

MR. MAHONEY: When?

BY MR. CONNOLLY:

Q. At or about this time? A. Did I request them not to put it on?

Q. Yes. A. I don't recall, sir.

MR. CONNOLLY: No further questions.

RECROSS EXAMINATION

BY MR. MAHONEY:

Q. If Your Honor please:

Mr. Feinman, it is true, is it not, then, in all [200] the construction jobs of which you were aware that Mr. Abrams performed from February '59 until the Charron job in '59, that you never did point to Exclusion L in his policy, and whether or not your interpretation was correct, or not, tell him that he would not be covered for accidents out of excavations? A. I can't say that I pointed to a specific exclusion on any policy saying you wouldn't be covered for excavation.

Q. Did you never tell him he was not covered for excavation; isn't that true? A. In answer to your question, yes.

Q. Now, is it also true that Mr. Abrams, during this particular period of time, and even before, in the period to which I am referring, February '59 to June '59, relied on your expertise in insurance matters to provide him with the coverage he needs; isn't that true?

MR. MARTELL: I object.

THE WITNESS: Only provided --

MR. MARTELL: Just a moment. How does he know what is in the mind of Mr. Abrams?

THE COURT: Sustained.

MR. MAHONEY: No further questions.

[201] BY MR. MARTELL:

Q. Did you know Abrams or Lesmark was doing excavating? A. Never.

Q. Did he ever tell you he was doing excavation work? A. Never indicated that at all.

MR. MARTELL: That is all I have.

BY MR. MAHONEY:

Q. How could you build a building without excavating it? A. Most contractors, sub-contracted their excavation and received certificates of insurance.

Q. Did you ever ask Mr. Abrams if that was his plan or purpose? A. I can't say that I did, or did not. I can't answer your question.

THE COURT: Let me see Aetna's Exhibit 2, that is the policy with Abrams. Hand it to the witness.

Mr. Feinman, I couldn't quite understand how this policy works. Under this policy, first as originally written, it covered bodily injury. Now, what bodily injury did it cover?

THE WITNESS: It covered bodily injury in limits of \$15 and \$100,000 as a result of Michael Abrams' negligence [202] in his operations.

THE COURT: And that would be true whether he were building buildings, one building or a thousand building?

THE WITNESS: This would be true, because this policy would be subject to an audit by the Hartford and they would pick up all his exposures at the end of the year, and then charge him.

THE COURT: And then charge him for all his exposures?

THE WITNESS: Yes, sir.

THE COURT: Then the same thing would happen as far as property damage, once property damage came under it; is that correct?

THE WITNESS: They would charge rate-wise, yes, sir. Once we added property damage they would pick up the same exposures and charge him only within the coverage as provided by the policy, subject to the exclusions.

THE COURT: Well, how do you determine what additional to charge him, has it been on the contract price of each job, or what?

THE WITNESS: No, there is a rate for each specific type of work

he does based on the Insurance Manuals, [203] and they charge so much per hundred dollars of payroll as developed. And this is only based at what he is supposedly doing when the policy comes into effect. If he does triple or quadruple the work the company will pick it up at the end of the year and charge him this additional premium based on the coverage. It's hard to determine what is going to develop during any middle of the year for any general contractor.

THE COURT: Let's see those endorsements, which I think are probably 2 of Aetna.

Well, now, referring to Exhibit No. 2-C, which is Endorsement No. 3 that went on this policy, it looks like that includes some insurance premium?

THE WITNESS: Yes, it does, sir.

THE COURT: How does that come about?

THE WITNESS: For specific jobs or contractual agreements where the company knows there is a contractual agreement, they can issue a specific charge for it, and when the endorsement is issued, they will issue a charge for that endorsement.

THE COURT: So, that was in the case of Pepco, and when you asked for the certificate in the case of Pepco, then they made a charge based on the Pepco contract, right?

THE WITNESS: If you will note, sir, based on these [204] endorsements, they didn't charge for the payroll as developed for that job, but just for the contractual agreement. They would have picked up the actual work while working at the end of the policy year by audit.

THE COURT: Payroll and Workmen's Compensation?

THE WITNESS: And this liability.

THE COURT: Let me see Hartford's Exhibit No. 1. Do you have that yellow sheet?

THE WITNESS: No, I just have this (indicating).

THE COURT: Here it is. That is dated, as I recall, February 11, 1959, isn't it?

THE WITNESS: Yes, sir.

THE COURT: And is that the basis for your conclusion that Ogus requested that the original policy to Abrams, 42 MCS 601753 was to start the general property liability in the amount of \$100,000?

THE WITNESS: No, sir, that wasn't our only basis.

THE COURT: Well, is it a basis?

THE WITNESS: It is one, yes, sir.

THE COURT: Now, what were the other bases?

THE WITNESS: The certificates of insurance which we issued which were sent a copy to the Hartford, which they never refuted any one, indicating they accepted.

[205] THE COURT: That also indicates to you a coverage of \$100,000?

THE WITNESS: On the policy, yes, sir.

THE COURT: And subject to the exclusions set forth in the policy previously issued; isn't that correct?

THE WITNESS: That's correct. I don't know whether I am permitted to say this, of course it's not my notation.

THE COURT: I have seen the notations on that.

THE WITNESS: It's not my handwriting.

THE COURT: I think that is all I have. Does anybody else have any questions?

\* \* \*

[215] BY MR. CONNOLLY:

Q. I understood you to say this morning, Mr. Feinman, that you believed that there was property damage coverage for the I Street job based upon your interpretation of your office records and you allude to two types of records, one is this note of Pat Taylor which is Hartford's Exhibit 1, this yellow piece of paper; and the other group of records to which you allude are these certificates of insurance. A. Yes, sir.

Q. And I thought this morning you and I agreed that it was your testimony that these limits shown on the certificates of insurance would

indicate not merely that there was coverage for the particular job for which they were issued, but there was such coverage in existence generally? A. To the individual that this certificate was issued to.

[216] Q. Well, when you say that, do you mean to say that you are telling Pepco that there is this coverage only for Pepco's job, or are you meaning to say that you are telling Pepco that this man has a policy which will cover property damage to anybody for \$100,000? A. I can only say that this certificate is telling Pepco that the policy provisions at the time this was issued to Pepco, contains these limits.

Q. Just to the Pepco job? A. No, the certificate tells Pepco that these are the limits under the policy at the time we issue a certificate to Pepco.

Q. All right. Now, is that certificate which was issued to Pepco in conflict with endorsements 3 and 4? A. It provides more than 3 and 4.

Q. The certificate provides more than 3 and 4? A. Yes.

Q. In other words, you represented to Pepco more than 3 and 4? A. Yes.

Q. And what the difference is, what the more amounts do, is that 3 and 4 is limited only to operations at Pepco? A. Limited only as to the contractual agreement [217] between Pepco and --

Q. How about this, how about 3? A. Also the increased limits to Pepco.

Q. How about this sentence right here I am pointing to? A. The increased limits as respects Pepco.

Q. It says it respects the operations at Potomac Electric Company only? A. I said that, I said as respects Pepco three times, sir.

Q. All right. Now, you also say that this memorandum from Pat Taylor, Defendant's 1, was a request to change these limits generally, not as the endorsements read; is that right? A. I also stated that, yes.

Q. All right. Now, prior to February 11, 1959, Michael Abrams never had completed operations coverage, did he? A. No, he did not.

Q. He did not have property damage coverage, did he? A. No, he did not.

Q. And he did not have contractual liability, did he? [218] A. No, he did not.

Q. Now, this would indicate, the certificate, Plaintiff's Exhibit 7, would indicate that as of February 11th Michael Abrams has completed operations coverage generally, does it not? A. The certificate would insure that, yes.

Q. It would also indicate that he had contractual liability, generally, did it not?

Looking at the certificate it would indicate they had contractual liability available up to \$100,000?

MR. MARTELL: Your Honor, the witness has already testified the contractual liability only goes between the contract between Pepco and Lesmark, so it will not indicate every contract Lesmark signs is limited to that liability.

THE COURT: Let the witness answer that.

THE WITNESS: The certificate would indicate to Pepco there is contractual liability.

BY MR. CONNOLLY:

Q. Generally? A. Since they specifically have a contractual liability.

Q. You show me where there is a request made to Hartford to give the man contractual liability.

THE COURT: When you say that, to what are you [219] referring?

MR. CONNOLLY: Hartford's No. 1, the Pat Taylor memorandum.

THE WITNESS: To add completed operations generally, and contractual liability.

BY MR. CONNOLLY:

Q. Where does it say that? A. I mean that's what you are asking me, right?

Q. Yes. A. The answer is, it doesn't; isn't that correct?



THE COURT: What was your last question?

BY MR. CONNOLLY:

Q. I said the answer is that the memorandum, from Pat Taylor, Hartford's No. 1, doesn't make any such request; isn't that not so? A. The only thing indicated as we interpret the memorandum, if that is what you are asking me for --

Q. Does the memorandum say with any intelligence in the insurance field that you are asking that Michael Abrams be extended contractual liability generally and completed operations coverage generally? A. It does not add contractual liability generally, but I would interpret it to include products operations [220] generally.

Q. Where do you get that? A. Well, it says, also add contractual liability and PD as per attached clause.

Q. As per attached clause? A. That's not generally, and also products completed operations, PD.

Q. You would ask the company to take on that kind of a risk without knowing what kind of products he is going to turn out, without any survey of hazards, or anything of that sort? A. Other companies have, and Hartford has.

Q. All right.

MR. CONNOLLY: No further questions.

\* \* \*

THE COURT: Mr. Feinman, when you undertook to cover insurance by a binder, did you ever notify them in writing that you have done so?

THE WITNESS: As a general practice, all our dealings on coverage, if someone asked for a specific thing, they have always taken it for granted they are covered and we indicate so when we take the order unless we specifically say no.

[221] THE COURT: That isn't the question I asked you.

THE WITNESS: No, we have never taken on a written binder to --

THE COURT: You don't even write them a letter and say, pursuant

to our telephone conversation of today, your policy is being amended to cover so and so?

THE WITNESS: No, we do not, sir.

THE COURT: All right.

\* \* \*

MR. CONNOLLY: Mr. Snodgrass take the stand.  
Thereupon

PAUL SNODGRASS

was called as a witness on behalf of Hartford, was duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CONNOLLY:

Q. Mr. Snodgrass, what is your full name, sir? A. My name is Paul Snodgrass.

[222] Q. Where do you live? A. I live at 4730 North 16th Road, Arlington.

Q. What is your occupation? A. I am with the Hartford Insurance Group, I am the Superintendent of Casualty Underwriting Department.

Q. In that capacity, does the type of insurance which is involved in the case on trial come under your jurisdiction and authority? A. It does.

Q. And did it in 1959? A. It did.

Q. At my request, Mr. Snodgrass, have you produced Hartford Accident & Indemnity Company's file pertaining to Michael Abrams' manufacturers and contractors policy? A. Yes.

Q. Now, first of all, would you produce the daily and the endorsement which are in Hartford's possession containing this policy?

These are stapled together.

These are audit sheets in the back, are they? A. That's right.

Q. Are they part of the policy? A. We keep them there for record purposes, but they [223] are not technically part of the coverage.

Q. All right.

MR. CONNOLLY: May I suggest that this whole package bear Defendant Hartford's No. 7 for identification and that the one in the back that has already been marked 7, be given a number starting with the first letter, 7-A, then B and C.

There are green audit sheets interspersed here, one which has already been marked, but I will ask that the Clerk not bother marking the rest of them. I have no objection to anybody seeing them. They needn't be part of the record.

THE DEPUTY: 7-A through 7-K of Hartford, marked for identification.

(Whereupon, Defendant Hartford's Exhibits Nos. 7-A through 7-K, inclusive, were marked for identification.)

BY MR. CONNOLLY:

Q. Now, there is the daily which is a summary or synopsis of the policies and seven endorsements; is that correct? A. That's correct.

[224] Q. When was Endorsement No. 7 prepared, issued? A. It was prepared on August 6th, 1959.

Q. All right. Effective as of what date? A. It would be effective July 30, 1959.

Q. What did this endorsement provide? A. This endorsement added property damage coverage to the policy in the limits of \$25,000 each accident and an aggregate of \$50,000.

Q. That is for policy 42 MCS 601753? A. That's correct.

Q. All right. Endorsement No. 6 was prepared when? A. This endorsement was prepared on August 6th, 1959 to be effective June 11, 1959.

Q. And what does it do? A. It increases the bodily injury limits to \$100,000 over \$300,000.

Q. From what? A. From the original policy limits of \$50,000 over \$100,000.

Q. All right. Now, what does Endorsement No. 5 do?

Incidentally, how many endorsement 5's do you have in your file?

A. We have two Endorsement No. 5's.

Q. Do you have an explanation as to how it is you [225] have two Endorsement No. 5's? A. Yes, the first Endorsement No. 5 --

Q. Which is 7-D, is that right? A. Which is Exhibit 7-D, changes the name of the insured from Lesmark, Incorporated to read Lesmark, Incorporated and Michael Abrams.

Subsequent to that --

Q. Now, you are looking at 7-C? A. I am looking at 7-C. We got a carbon copy of the original No. 5, that is Exhibit 7-D which we received this endorsement No. 5 from the agent where they had changed the name of the insured slightly and had put a notation on here that we should correct all the other copies as well.

Q. And how did the agent change it? A. The agent changed the named insured to read: Lesmark, Incorporated and Michael Abrams, as respects jobs for Dixie Janitor Supply warehouse and Rockville Volunteer Fire Department, Incorporated.

Q. All right. Now, would you turn to Endorsement No. 4, which is 7-F, correct? A. That's correct.

Q. Talk of this in terms of that as well as Endorsement No. 3, which is Defendant Hartford's Exhibit 7-G. [226] A. Exhibit 7-F is the contractual liability endorsement which insures a contractual agreement between Lesmark and Pepco.

Exhibit 7-G is the increased limits of liability for specific operations endorsement which increases the policy coverage only with respect to the operations being performed for Pepco.

Q. Now, did you have anything personally to do with the preparation of those two endorsements? A. I was involved in this, yes.

Q. In what fashion? A. The agency had issued a certificate of insurance to Pepco stipulating that the policy provided the higher bodily injury limits of \$100,000 over \$300,000 and that the policy also provided \$100,000 property damage.

Actually, the policy did not provide the high bodily injury limits and it provided no property damage.

After some discussion between our office and the agent's office, we found that the certificate had been issued by the agency on or about February 11, 1959 and that the job was completed at the time the endorsement was issued, which was July 17, 1959, and in order to avoid any embarrassment to the agency or to ourselves, we agreed to go ahead and endorse the policy as the coverage had been certified.

[227] Q. And that is how come Endorsement 3 and 4 were issued at such a late date after the effective date; is that correct? A. That's right.

\* \* \*

Q. Now, did you make any investigation of the Pepco job? A. No, we did not.

Q. Just that you determined it had been completed? A. That's right.

Q. All right. Now, Mr. Snodgrass, I want to show you Defendant Hartford's Exhibit 1 for identification. Is a copy or original or any other reproduction of that exhibit to be found in the Hartford files, or has it ever been found in the Hartford file? A. We have no record of this request.

Q. Never did? A. No, sir.

[228] Q. I am going to show you Plaintiff's Exhibits Nos. 8, 9 and 10, which are the certificates of insurance, 8 and 9 to Dixie Janitor Supply and 10 to Rockville Fire Department, and ask you if Hartford received copies of those certificates? A. We have no record of these certificates.

Q. What do you mean you have no record of them? Do you have the certificates themselves? A. No, we have no record of these copies of these certificates.

Q. Or that they were ever received? A. That's correct.

Q. All right. Now, I am going to show you Plaintiff's Exhibit 7

which is the certificate of insurance to Pepco. Does the Hartford office records contain a duplicate of that certificate? A. We do not have a duplicate of this certificate.

Q. Did you ever have a duplicate of that certificate? A. Not according to our records.

Q. How did you find out that such a certificate had been issued? A. As best I can recall, the agency telephoned our office and inquired about an endorsement to change the [229] coverage on the policy. This was the first knowledge we had that they had issued a certificate. They told us at that time that they had already certified higher limits to Pepco.

Q. And when was that telephone call received? A. It was prior to July 17, 1959.

Q. Was it much prior? A. I would say within 30 days prior to that.

Q. All right. Now, do the records which you have in your possession indicate any further transactions other than what we have already discussed with either Lesmark, or Michael Abrams or Harris & Ogus on behalf of Abrams concerning insurance coverage? A. We have no further records, no.

Q. I want to direct your attention to the OTS policy.

Actually you are speaking of OTS coverage which was added to a subsequent policy; is that correct? A. All right.

THE COURT: What is OTS?

THE WITNESS: Owners, tenants scheduled liability coverage, it's the same as owners, tenants and landlords liability coverage.

THE COURT: All right.

[230] BY MR. CONNOLLY:

Q. Prior to the loss involved in the case, namely, July 28, 1959, was Hartford and Harris & Ogus engaged in procuring some other type of insurance for either Michael Abrams or Lesmark? A. We have a copy -- we have the request that was taken on the telephone on July 23rd, 1959 for Policy 42 MCS 602366, to add on the coverage for a business

office of 400 square feet.

Q. All right. The MCS policy you refer to has a number 602 -- what? A. 366.

Q. That is different than the one involved in this particular case; is that right? A. Right. This is a policy subsequent.

Q. Is that the policy -- what was the policy anniversary date of the one involved in this case? A. The one in this case expired on August 26, 1959.

Q. So, the policy that was contemplated issuing as a renewal was 602366? A. That's correct.

Q. So, you have a notation of a telephone request that came from the agent concerning the renewal policy on [231] July 23rd and it requested an addition of OTS coverage. Did it make any other requests pertaining to the OTS policy? A. It requested that we raise the bodily injury liability to \$100,000 over \$300,000 on the entire policy. It also requested that we give \$5,000 property damage on the OTS coverage only and there is a notation which reads: "Do not put property damage on MCS policy."

Q. So, on July 23rd you were even told with respect to the renewal policy that Michael Abrams did not want property damage coverage; is that correct? A. That's correct.

Q. Thank you.

MR. CONNOLLY: No further questions.

\* \* \*

[232] CROSS EXAMINATION

BY MR. MAHONEY:

Q. Mr. Snodgrass, in response to certain questions by Mr. Connolly, you stated according to your file you had no notice of any of the certificates of insurance that were issued in connection with the jobs by Lesmark, Inc. in 1959. Do you want to correct that testimony? A. Yes, I'd like to do that. We did not have copies of the certificates at-



tached to the daily in question, that is, Policy 42 MCS 601753. We do have copies of the certificate of insurance which were attached to a Workmen's Compensation policy.

Q. They were in your file for Lesmark, were they not? [233] A. They were and are in our file.

Q. How many policies do you have there, approximately?

\* \* \*

Q. The certificates referred to are Plaintiff's Exhibit 7, 8, 9 and 10, which refer to the Pepco job, the Dixie Janitor and Rockville Volunteer Fire Department.

Do you have a copy of each of these exhibits in that file? A. You have four here, let's see.

\* \* \*

[234] THE WITNESS: I believe your Exhibit 8 and 9 are identical, but we have copies of Exhibits 7, 8 and 9, yes.

BY MR. MAHONEY:

Q. So that your company was aware of the issuance of these certificates before July of 1959; is that correct? A. Well, I don't know the date that these certificates were received or attached to the policy, if that is what you mean.

THE COURT: Did you repudiate any of them?

THE WITNESS: The only one that we had repudiated was the Pepco job.

BY MR. MAHONEY:

Q. You acquiesced in that, didn't you, because you did issue the endorsement covering that certificate? A. Subsequently we did, yes.

Q. So, you didn't repudiate it? A. Agreed.

Q. So, one of the last questions asked you, Mr. Snodgrass, concerned whether or not property damage coverage was requested to be added to a policy, so there not be any misunderstanding, property damage was asked not to be added to a policy other than the one we are talking about today; isn't that true? A. It was the policy subsequent to

the one we are [235] talking about today, yes.

Q. And the policy to which you referred to in the last question asked by Mr. Connolly was Policy MCS 602366? A. That's correct.

Q. And the note reads: "Do not put PD on this policy;" is that right? A. On Policy 602366?

Q. Yes. A. That's correct.

Q. And this policy was in effect after the loss? A. That's correct.

Q. Now, do you know whether or not Mr. Abrams or Lesmark, Inc. had another policy which had property damage coverage on it after the loss, with another company? A. It's my understanding, yes.

Q. All right.

\* \* \*

[236] THE DEPUTY CLERK: Plaintiff's Exhibit 11 in evidence.

(Whereupon, Plaintiff Aetna's Exhibit No. 11 was received in evidence.)

BY MR. MAHONEY:

Q. Mr. Snodgrass, at about the time of the loss, or shortly thereafter, was your company ever requested to add contractual liability to the MCS policy 601753, increase the general liability and property damage for this job for \$100,000 and \$300,000 and \$150,000 property damage? A. With reference to the I Street job?

Q. Yes. [237] A. Yes, we received a request from the agency to add the coverage that you described.

Q. All right.

THE COURT: What date was that?

MR. MAHONEY: 7/29.

THE WITNESS: July 29, 1959.

BY MR. MAHONEY:

Q. Now, Mr. Snodgrass, are all the policies that you have there, were they all issued through the Harris & Ogus agency? A. Yes.

Q. And were they all for Lesmark, Inc. or Abrams? A. That's correct.

Q. And briefly, could you tell us what they encompassed? A. This encompassed the business insurance as requested, essentially Workmen's Compensation, manufacturers and contractors liability insurance, bodily injury only.

Q. Automobile? A. There was one automobile policy covering one car.

Q. Burglary? A. There was a holdup policy, burglary form, yes. That's it.

\* \* \*

[238] BY MR. MARTELL:

Q. Mr. Snodgrass, in view of the fact that you did discover after your direct testimony the fact that these certificates of insurance as were previously testified to by Mr. Feinman were eventually found in your files, can you explain to us, sir, why they were attached to the wrong policy? A. I can explain it this way: When a certificate of insurance is issued it identifies the policy numbers, and this particular certificate for Pepco, for example, has three, five policy numbers identified. Normally we get copies of certificates equal to the number of policy numbers stated in a certificate. A copy of the certificate should be attached to each policy number.

Q. Why then would the Dixie Janitor Supply, the Rockville Fire Department and the other certificate be attached to a workmen's compensation policy? A. Because the workmen's compensation policy number is identified and the workmen's compensation policy number is the first number shown on the certificate of insurance.

Q. So, you don't repudiate the fact that your office didn't receive these certificates, do you? A. No, I don't repudiate the fact that we received [239] them, I don't know when.

THE COURT: Repudiate is not the word, it's deny, isn't it?

MR. MARTELL: Yes, Your Honor.

BY MR. MARTELL:

Q. In the usual course of business, you have them from the agent

the day following the agent's typing of the certificates, do you not, sir?

A. More often than not, yes.

MR. MARTELL: That is all I have, Your Honor.

MR. MAHONEY: I believe I should have that exhibit marked. I made reference to a memorandum and it was not marked.

THE COURT: All right.

MR. CONNOLLY: No objection.

THE COURT: It will be admitted.

(Thereupon, exhibit in question was admitted in evidence.)

THE COURT: Mr. Snodgrass, under your agency agreement between Hartford and Harris & Ogus, in February 1959, would Harris & Ogus have had authority to issue a binder on Policy No. MCS 601753, providing for property damage under the property in the amount of \$100,000?

[240] THE WITNESS: They would not have had authority for that.

THE COURT: Why do you say that?

THE WITNESS: Because our branch office at that time only had authority for \$50,000 property damage liability. And in order to get \$100,000 property damage approved, we would have to ask our Home Office for permission, so we can't grant authority to our agents which we don't have ourselves.

THE COURT: Well, then, they would have had authority to have written \$50,000?

THE WITNESS: They would have had that yes.

THE COURT: All right.

Any other questions?

MR. MARTELL: One other one, Your Honor.

BY MR. MARTELL:

Q. Mr. Snodgrass, did you ever request the Home Office to issue any authority to bind in any larger amounts than say the \$100,000? A. For this risk, you mean?

Q. Yes. A. No. The \$100,000 that we did finally provide was for

the Pepco job.

[241] Q. You provided \$100,000 for the Dixie Janitor Supply, didn't you? A. It was certified that way, but the coverage was never placed upon the policy.

REDIRECT EXAMINATION

BY MR. CONNOLLY:

Q. What do you mean by certified? A. Certificate of insurance was issued by the agency showing \$100,000 property damage, but the policy itself does not contain that coverage.

THE COURT: Do you have any paper to show this limit on Harris & Ogus of \$50,000?

THE WITNESS: No, sir. The only limitation we would have would be the agency agreement where I believe it says that the agent has the power to issue policies and binders as the company may from time to time provide, and underwriting is a flexible matter, underwriting conditions change.

THE COURT: Let me see that exhibit, please.

THE WITNESS: From time to time we did change our authority as to what we will write, or the limits that we will provide.

THE COURT: Referring you to the Aetna, Plaintiff's Exhibit No. 6 where do you find any limitation in there, [242] or do you find any?

THE WITNESS: The only limitation, sir, would be a matter of interpretation, I suppose, and the Paragraph No. 1, we state that the company hereby grants authority to the agent to solicit and submit applications for the classes of insurance and fidelity and surety bonds specified in the schedule of commission allowances annexed hereto, to issue and deliver policies, bonds, certificates, endorsements and binders which the company may from time to time authorize to be issued and delivered.

THE COURT: Well, it says you can issue the things in the schedule, doesn't it, doesn't the schedule have property liability?

THE WITNESS: The schedule includes the policy forms that we allow the agents to submit applications for and for which we issue contracts, yes.

THE COURT: Where does it say \$50,000 in it?

THE WITNESS: It does not say \$50,000 is the limit. It simply refers to such matters that the company may from time to time authorize to be issued and delivered.

THE COURT: All right.

\* \* \*

[243] BY MR. CONNOLLY:

Q. Showing you Plaintiff's Exhibit No. 12 which is this request dated July 29, is that the form in which requests for insurance customarily came? A. From this agency, yes.

Q. And it is submitted in duplicate, a white and a pink sheet? A. That's right.

Q. Was it on July 29 that the parties discovered the loss had taken place the preceding day? A. I believe it was on July 28th, that the parties discovered the loss.

Q. I am talking about Hartford now. A. Hartford knew of the loss the day of the accident, I believe.

Q. All right. Let me show you something to refresh your recollection.

Have you ever seen that document before? A. Yes, I have.

Q. What is it? [244] A. This is a notation from our Claim Department indicating that they were notified of the loss on the day after the loss at 10:15 a.m.

Q. What is there attached to it that you are holding in your left hand? A. This is a newspaper clipping about the buildings being in difficulty.

MR. CONNOLLY: Gentlemen, I used that to establish the date and time of the loss. If you want to put it in evidence, I have no objection to the whole thing going in.

MR. MARTELL: No, it is nothing of this witness' personal knowledge. It is all hearsay.

THE COURT: All right. Where is that other exhibit?

\* \* \*

BY MR. CONNOLLY:

Q. The policy MCS 602366, was to take effect for the policy year after the termination, the terminal dates of 601753, correct? A. That's correct.

Q. And before the terminal date Hartford and the agent were discussing the terms of this policy, correct? A. That's correct.

[245] Q. And this memorandum which is identified as Plaintiff's Exhibit No. 11 was prepared several days before the 1919 I Street loss? A. That's right. It was prepared on July 23rd.

Q. Thank you.

MR. CONNOLLY: I have no further questions.

THE COURT: Anybody else have any questions?

MR. MARTELL: I have nothing further, Your Honor.

MR. MAHONEY: I have nothing further.

THE COURT: You may step down.

(Witness left the stand and resumed his seat at counsel table.)

MR. CONNOLLY: Offer these.

THE COURT: Be admitted.

THE DEPUTY CLERK: Hartford Exhibit No. 7 marked in evidence.

(Whereupon, Defendant Hartford's Exhibit No. 7 was received in evidence.)

MR. CONNOLLY: We rest, Your Honor.

\* \* \*

[246] THE COURT: Gentlemen, this is indeed a can of worms.

MR. CONNOLLY: Your Honor --

MR. MAHONEY: Do you want to hear argument, Your Honor?

THE COURT: I want to hear argument, but I am trying to deter-



mine in my own mind when I want to hear the arguments.

MR. CONNOLLY: Your Honor, before this case ever started and for my general education, and trying to be non-partisan, I listed some fact questions and some law questions which I thought were involved in order to keep my own thinking straight; Your Honor may find these helpful.

\* \* \*

[250] THE COURT: That doesn't make any difference if they were in fact agents of Hartford and Ogus was representing to him that they had gotten it from Hartford, which I think was done in this case.

However, if we do eventually so find that, it does seem to me that clearly under the contract excavation is not covered, and I don't see any evidence, I don't find any evidence whatsoever that either expressly or by implication, or by general reliance that Abrams ever asked or expected Ogus to take out the exclusion on excavation which would apply in this case, or that they relied on Ogus to cover them fully under policies for whatever he was doing. I just don't find that.

As a matter of fact, Mr. Abrams' testimony was such that I don't think I would believe any of it, and therefore, I think I would find that there was never any such request.

Again, this is all subject to being changed if somebody can show me in the myraid of exhibits which have been put in something that would change my mind.

As to the release, I just don't know whether that would be effective, because actually it becomes moot [251] if I hold as I have indicated, and I don't know whether I should go ahead and treat it so it could be finally disposed of maybe in the Court of Appeals, or not.

Suppose I should find and hold as I have indicated, do you gentlemen feel that the release should also be treated?

MR. MAHONEY: I do, Your Honor.

MR. MARTELL: I believe that the release would then become a moot point, Your Honor.

THE COURT: Well, it would be moot.

MR. CONNOLLY: The only problem is this, Your Honor: That should it be reversed, and I don't think it would be, but should it be reversed, then you would have to come back and have another trial and maybe that would be two years from now. This case is already pretty seedy.

THE COURT: That's right. On the release, Mr. Mahoney, my law clerk checked your authorities here in your memorandum of the law, and I don't think your cases are applicable. I have no quarrel with any of the cases you have cited, but I just don't think they are applicable to the law in this case.

\* \* \*

[286] THE COURT: Of course, I may say there is connection with the release: If there were any proof whatsoever of fraud in connection with the release, but you don't claim that. As a matter of fact, you disclaimed it.

MR. MAHONEY: I disclaimed it for Mr. Martell, but I would say he has a right to protect his client and get out for a sum as cheaply as possible, but if there is any fraud it doesn't come this way, it comes from Lesmark.

THE COURT: I haven't seen the evidence of it.

MR. MAHONEY: I make reference to the memorandum, implication of fraud is especially strong when the wrongdoer [287] settles a claim at an amount far less. That is, see Couch, Insurance, Section 2001. That was in the memorandum.

THE COURT: As everyone sitting in this room knows, what you settle a claim for depends among other things on what it is worth, how good a case you have.

All right. Anything else.

\* \* \*

THE COURT: All right.

Now, let's start out with Mr. Connolly's proposed findings of fact

and conclusions of law. Does anyone have any objection to the first page? It's just a general recital that the matter came on and so forth.

[295] MR. MARTELL: I have no objection, Your Honor.

THE COURT: Mr. Mahoney, do you have any objection to that?

MR. MAHONEY: None.

THE COURT: I doubt there should be any objection to Findings 1, 2, 3 and 4, if there are, let me know.

MR. MAHONEY: 4, 5, 6 and 7.

THE COURT: I haven't gotten past four yet.

Any objections to 1, 2, 3 or 4?

MR. MARTELL: No, Your Honor.

THE COURT: Mr. Mahoney?

MR. MAHONEY: None.

THE COURT: All right. Any objection to 5?

MR. MAHONEY: No objection, Your Honor.

THE COURT: Mr. Martell?

MR. MARTELL: No, Your Honor.

THE COURT: Any objection to 6?

MR. MARTELL: No, Your Honor.

MR. MAHONEY: None

THE COURT: Seven?

MR. MAHONEY: None.

MR. MARTELL: No, Your Honor.

THE COURT: Eight?

[296] MR. MAHONEY: Yes.

\* \* \*

[301] MR. CONNOLLY: \* \* \* What is 11?

MR. MAHONEY: I have no objection up to the end of the first sentence. The rest of it is argumentative.

THE COURT: Well, the actual testimony was to satisfy the insurance specifications. The word "insurance" ought to go in there between satisfy and specifications.

\* \* \*

[320] MR. MAHONEY: I object to all the findings of fact and conclusions of law that the Court has announced in the preceding discussion -- with the exception of --

THE COURT: Just object to all of them.

MR. MAHONEY: With the first seven.

\* \* \*



BRIEF FOR APPELLANT

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**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

No. 20,858

---

AETNA CASUALTY AND SURETY COMPANY,  
*Appellant,*

v.

WALTER OGUS, INC.  
and  
HARTFORD ACCIDENT AND  
INDEMNITY COMPANY,  
*Appellees.*

---

No. 20,859

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AETNA CASUALTY AND SURETY COMPANY,  
*Appellant,*

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WALTER OGUS, INC.  
and  
HARTFORD ACCIDENT AND  
INDEMNITY COMPANY,  
*Appellees.*

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**APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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United States Court of Appeals  
for the District of Columbia Circuit

**FILED JUN 8 1967**

*Nathan J. Paulson*  
CLERK

CHARLES E. PLEDGER, JR.

JOHN F. MAHONEY, JR.

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Washington, D.C. 20005

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(i)

### STATEMENT OF THE QUESTIONS PRESENTED

In the opinion of the appellant, the questions are these:

1. Does an insurance agent, upon whose expertise a person relies, have a duty to that person who is engaged in the construction business, and who requested property damage liability coverage added to his existing policy to secure adequate property damage coverage for the types of property damage liability which would ordinarily flow from his type of operations or alternatively, to advise him of the limitation in the standard property damage liability coverage ordered for him?

2. When an insurance carrier pays judgments totaling \$25,581.98, on behalf of a tortfeasor who has a pending suit against his insurance agent and his principal for indemnification of these judgments and the agent and principal have knowledge of such payment, does a release between the tortfeasor and the agent for the consideration of \$1,500.00 defeat the equitable rights of subrogation of the insurance carrier against these parties?



(iii)

# United States Court of Appeals

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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BRIEF FOR APPELLANT



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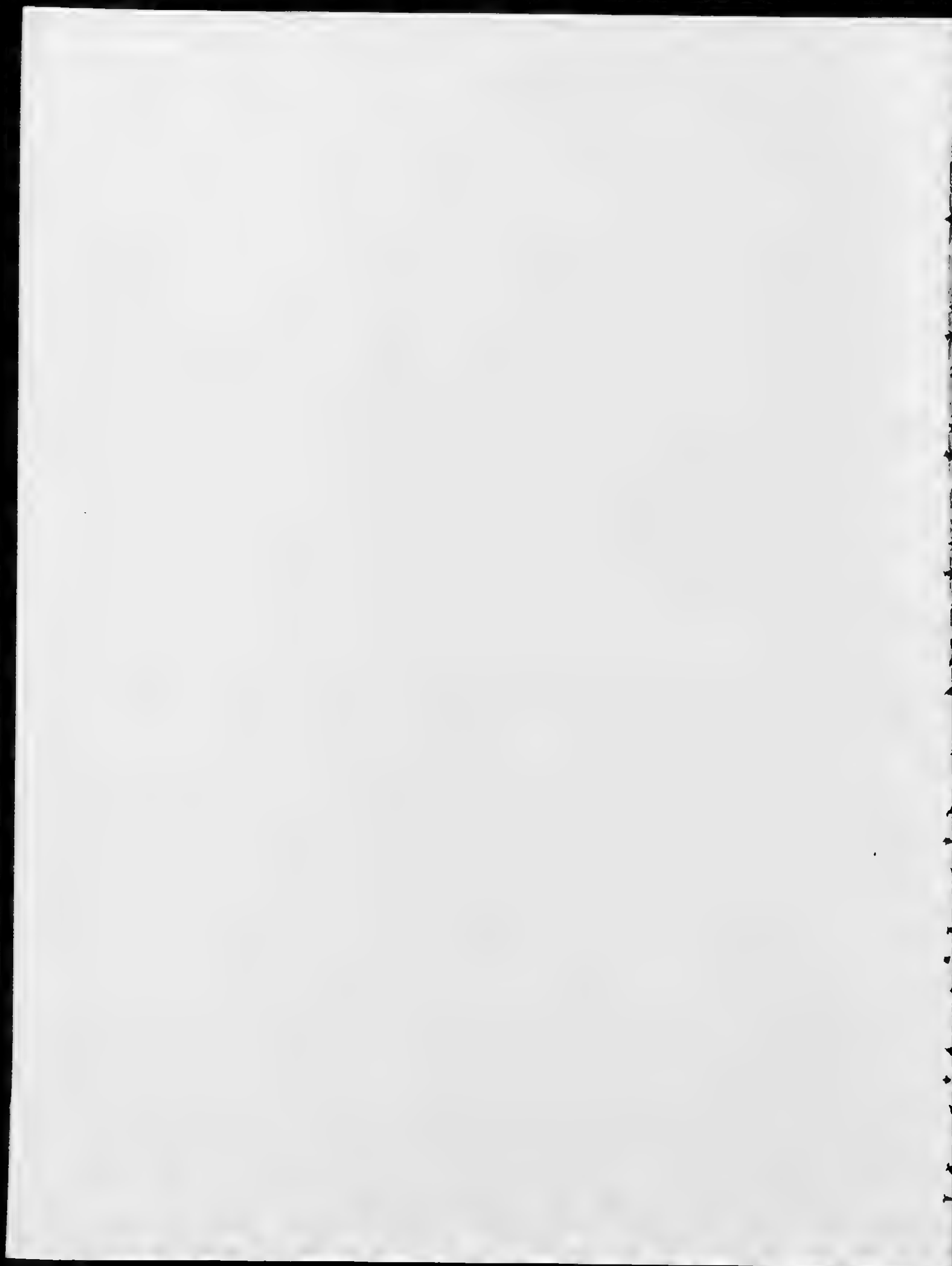
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## JURISDICTIONAL STATEMENT

These actions, which have consolidated on appeal are garnishment proceedings instituted below by Aetna Casualty and Surety Company, garnishor, against Walter Ogus, Inc., and Hartford Accident and Indemnity Company, garnishees, to recover monies owed by them to Lesmark, Inc. A final judgment was entered for the garnishees in a non-jury trial before Judge Hart. This appeal is taken from these judgments. The jurisdiction of this Court is founded upon the provisions of Title 28, Section 1291, U.S. Code.

## STATEMENT OF THE CASE

This case has a very lengthy history. The issues on appeal arise out of the trial below before Judge Hart on January 3-6, 1967 but prior proceedings in this litigation, dating back to the filing of the complaint in the main action on December 11, 1959, have a direct bearing on the questions to be decided. Accordingly, this statement will be divided into two sections: A history of prior proceedings leading up to the trial before Judge Hart and the developments at the trial itself. For the sake of brevity, the names of the parties, after being fully identified, will be later abbreviated.

### History of the Case:

On December 11, 1959, Isabel C. Pryce and Robert Ash, owners of buildings at 1917 and 1921 I Street, N.W., respectively, filed suit against Walter S. and Marie L. Charron, owners of the vacant lot between these properties and others, for property damage sustained to their buildings after Lesmark, Inc., the general contractor for the Charrons, began excavation for the construction of a building on the Charron property (JA 1-4). Lesmark, Inc. in turn filed a third-party complaint against Harris &



Ogus, Inc., its insurance agent, predecessor to Walter Ogus, Inc., one of the appellees herein, which in turn filed, what is styled as a fourth-party complaint, against Hartford Accident and Indemnity Company, each seeking indemnity against any sums rendered against them in this action (JA 8, 11, 17, 19). The theory of Lesmark's third-party complaint is that prior to the time that the property damage complained of was sustained, Lesmark requested and was advised by Ogus that property damage liability insurance had been obtained through Hartford to cover Lesmark's operations (JA 12). Ogus in turn claimed hypothetically against Hartford that if Lesmark recovers against it, it would be by reason of Hartford's negligence or breach of contract with Ogus in failing to issue the requested coverage (JA 18). The third and fourth-party actions were then severed and stayed pending a disposition of the main action (JA 24).

In the trial of the main action (*Pryce, et al. v. Lesmark, et al.*, C.A. Nos. 2364-59 and 3506-59), the evidence disclosed that after Lesmark began excavation, the party walls of both adjoining buildings sank, causing damage to plaintiffs' buildings. Judge Tamm, sitting without a jury, found that Lesmark's negligence was a proximate cause of the damage and that the Charrons, as adjoining owners, were liable as a matter of law. A judgment in favor of Ash against both the Charrons and Lesmark was awarded in the sum of \$21,400.00 and in favor of Pryce in the sum of \$3,472.00. The Charrons were also awarded judgment on their cross-claim for indemnity against Lesmark, Inc. (JA 25-34).

Lesmark appealed the judgment in favor of these plaintiffs to this court and while these appeals were pending, the Charrons, through their insurer, Aetna Casualty & Surety Company, satisfied the judgments against them. By virtue of this satisfaction, Pryce and Ash moved this court to dismiss Lesmark's appeal against them as moot, which was granted. The appeal of Les-

mark against the Charrons on the cross-claim for indemnity was affirmed. See opinion of this court, *Lesmark, Inc. v. Pryce, et al.*, 1964, 118 U.S. App. D.C. 194, 334 F.2d 942.

When the case was returned to the lower court, a judgment on the cross-claim for indemnification in the Ash case was entered on May 8, 1964 on behalf of the Charrons against Lesmark, Inc. for \$3,580.48 with interest thereon from May 22, 1963 and a judgment in the Pryce case in favor of the Charrons against Lesmark, Inc. for \$22,001.50 (JA 51, 52).

As the claims in the main action were now disposed of, the aforementioned third and fourth-party actions against the agent Ogus and insurer Hartford by Lesmark, then proceeded towards trial. These actions came on for pretrial hearing on October 22, 1964 and in the pretrial order, there is the following statement (JA 58):

"Defendant and third-party plaintiff, Harris and Ogus, Inc. both in defense of the claim of Lesmark, Inc. and in support of its claim against Hartford, admits being requested by Lesmark, Inc. to secure property damage coverage on the then-existing Hartford Accident & Indemnity Co., Policy No. 42 MCS 60173; admits that it placed this order for property damage coverage with its principal, Hartford Accident & Indemnity Co.; admits advising P, Lesmark, Inc. that it, Lesmark, was then bound upon this property damage coverage in accordance with a general agent's binding authority."

Hartford denies all allegations of negligence or breach of contract and the issues were joined for trial (JA 59).

Before the trial, Lesmark had financial reverses and became insolvent (JA 253). Accordingly, its president Michael Abrams, became disenchanted with the continued prosecution of the third-party action, the proceeds of which would go only to satisfy the

judgment of the Charrons against Lesmark, and on the eve of this trial, counsel for Aetna was notified by telephone of a proposed settlement of the third-party action for the total sum of \$1,500.00 (JA 126). The following morning, counsel for Aetna appeared before the then Chief Judge McGuire in the lower court and requested a continuance of the trial of this third-party action to allow it an opportunity to take such steps as it deemed necessary to protect its interests (JA 126). A letter was immediately sent by counsel for Aetna to each of the parties, demanding that the aforementioned settlement not be consummated as it was in violation of Aetna's subrogation rights and as such, it would be ineffectual and void. A motion to intervene in the third-party suit by the Charrons was promptly filed (JA 63-64), but did not come on for hearing because of the summer recess until September, 1965. This motion was denied by Judge Holtzoff with the proviso, however, that further proceedings in this case be stayed pending the disposition of the garnishment proceedings just filed (JA 81). During the argument on the motion to intervene, the court indicated that the proper procedure for the Charrons to assert their rights would be through garnishment proceedings and such were instituted before the signing of the order denying the motion to intervene (JA 68-79).<sup>1</sup> Answers to the writs of attach-

<sup>1</sup> Although appellants contend this ruling was in error and the Charrons should have been allowed to intervene under Rule 24(a) F.R.C.P.:

"An Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: \* \* \* (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; \* \* \*

*Stadin v. Union Electric Co.*, 1962, 309 F.2d 912; *Peckham v. Family Loan Co.*, 1954, 212 F.2d 100. No issue is made of this point here as the identical issues were tried in the garnishment proceedings and appellant is aware that this court has oftentimes stated that it will look to the substance rather than the form of the action when justice requires.

ment were filed and then traverses to these answers (JA 82-92). Thus, once again, the "insurance issues" were joined and a further pretrial hearing was scheduled.

On November 8, 1966 at the second pretrial hearing, Aetna moved to be substituted for the Charrons on the ground that it was a real party in interest having paid the judgments on their behalf. Such motion was allowed (JA 95). Aetna claimed that Ogus and Hartford, as the former's principal, were both indebted to Lesmark by reason of Ogus's negligent failure to provide adequate and necessary property damage coverage for the construction work on I Street (sometimes referred to as The Flower Shop job) performed by Lesmark on which it relied. Alternatively, Aetna claims that an order for property damage coverage was placed by Ogus with Hartford and the latter "was bound" by this request (JA 94).

Accordingly, the issues to be tried were principally two-fold:

1. Did the agent, Ogus, under the circumstances of this case, have a duty to provide adequate property damage liability coverage which would include liability for damages caused by excavation or, if not, to advise Lesmark of the limitation in the standard property damage liability clause?
2. Did the release for the consideration of \$1,500.00, signed by Lesmark, after notice of Aetna's rights, bar the present action by Aetna against either Ogus and Hartford or both.

#### The Trial:

On January 3, 1967, the garnishment proceedings came on for trial before Judge Hart as non-jury actions (JA 174). At the outset, Judge Tamm's Findings of Fact in the *Pryce* suit were made part of the record (JA 25-34, 174) and it was agreed the

damages for which indemnity was sought, were caused by Lesmark while excavating (JA 25-34).

The first witness to testify was Samuel Barker, the attorney for Lesmark, Inc. in the earlier proceedings, whose testimony related to the release issue. He testified that he received a letter from Aetna's counsel, dated March 5, 1965 advising him that Aetna would consider any proposed settlement of the action for \$1,500.00 as ineffectual and void but that a release was nevertheless executed by his client on March 8, 1965 (JA 177). This letter and his response were introduced into evidence (JA 133). He went on to say that on March 15, 1965 he received a check from counsel for Ogus in the amount of \$1,500.00 representing the consideration for the release (JA 180).

At this juncture in the trial a tender of the consideration was made by counsel for Aetna to counsel for Ogus and refused (JA 181).

This witness was followed to the stand by Harold Fineman, vice-president of Ogus. Through Mr. Fineman the agency agreement between Ogus and Hartford was introduced (JA 135, 187). He testified that he had "binding" authority with Hartford (JA 187-188), which meant in insurance parlance, that the insured has the particular coverage requested at the time requested, i.e., when he is "bound", and before the policy is actually received (JA 188).

Mr. Fineman testified that he had business dealings with Mr. Abrams (later president of Lesmark) since 1957 (JA 188). In February, 1959, Lesmark, Inc. was incorporated. Earlier that year Fineman requested in a memorandum to Hartford that Lesmark's coverage be changed and that property damage liability in the amount of \$100,000.00 be added to the existing MCS policy (JA 116-125, 189-190). Between the period of February, 1959 and July, 1959, Ogus issued certificates of insurance to various parties who had engaged Lesmark to perform construction

work. The first certificate was for a construction job for Potomac Electric Power Company, issued on February 11, 1959 (JA 194, 136); then on June 18, 1959 for Dixie Janitor Supply Warehouse (JA 195, 137). A third certificate was issued to Rockville Fire Department on June 18, 1959 (JA 196, 138). Each of these certificates indicated that Lesmark had in force a manufacturers and contractors liability policy with property damage liability in the amount of \$100,000.00, effective from August 26, 1958 to August 26, 1959 (JA 196).

With respect to the I Street (Flower Shop) job, Mr. Fineman was referred to his deposition (page 51) and asked these questions: (JA 197-198)

"Q. With respect to any (sic) operation conducted on Eye Street, did Abrams ask you to get such insurance as he might need?

A. Within the limits that we were getting him specifically we have an endorsement.

Q. My point is, did you undertake to advise him that he needed certain kinds of insurance and leave it to him to make his judgment, or did he leave it to you to give him such insurance as he might need?

A. *He would advise us the job he was doing, and we would indicate the insurance he would get.*

Q. Did he advise you of the job that was being done in the 1900 block of Eye Street?

A. I can't specifically recall the job. I am sure he did, but of specific incidents I cannot give you any."  
(Emphasis supplied.)

When the MCS policy was first issued in 1957, it did not contain property damage liability coverage but as Abrams increased his business activities and Lesmark, Inc. came into existence, property damage liability was endorsed on the policy (JA 203, 141), and was in effect at the time of the loss in question according to this witness (JA 210-214).

It is contended by Ogus and Hartford that the standard property damage liability coverage, such as was afforded to Lesmark, did not provide coverage for the damage caused by excavation by virtue of exclusion "L", therein. (JA 108)

"This policy does not apply:

\* \* \*

(1) under coverage B, with respect to division 1 of the Definition of Hazards, to injury to or destruction of any property arising out of (1) blasting or explosion, other than the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment, or (2) the collapse of or structural injury to any building or structure due (a) to excavation, including borrowing, filling or back-filling in connection therewith, or to tunneling, pile driving, coffer-dam work or caisson work, or (b) to moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof; provided, however, part (1) or part (2) of this exclusion does not apply to operations stated, in the declarations or in the company's manual, as not subject to such part of this exclusion;

But at no time in his business dealings, including the vital period in question from February through July, 1959, did Fineman ever advise Abrams that in order to be fully protected in the construction jobs that he was engaged in, he should have in addition to the standard property damage liability coverage, a particular separate coverage for damage caused by excavation (JA 199-265). And as a practice, when Lesmark or Abrams (which now may be used interchangeably) did obtain a contract to do a job, he, Abrams, would inform Fineman of the insurance specifications and then Fineman would advise Abrams of his insurance needs to meet these specifications (JA 198, 261-262). Moreover, Fineman never asked Mr. Abrams if, in his construction work, he performed



some of the excavation (JA 199). Accordingly, none of the jobs from February, 1959 through July, 1959, undertaken by Abrams, were adequately covered by insurance.

Michael Abrams, the next witness, testified that he is president of Lesmark, Inc.; that prior to 1959 he worked on a "builders' fee basis" in which the owner would take out the necessary insurance for the job (JA 215-216). In February, 1959 at about the time of the Pepco job, his operations enlarged and he then requested additional coverages (JA 216). Mr. Abrams testified that he has been doing business with Ogus since 1953 and that this agency is his *sole* insurance broker (JA 217).

On each construction job Abrams testified that he did consult Ogus on his insurance needs and that on several jobs he engaged in excavation work of some sort (JA 217, 218, 221), but that there were no claims for property damage other than on The Flower Shop job. Mr. Abrams testified that The Flower Shop job was the only one requiring \$150,000.00 property damage coverage in the insurance specifications (JA 244).

At the conclusion of Abrams' testimony, the plaintiff rested.

After Harold Fineman was recalled for further re-questioning by counsel for Hartford, the superintendent of Casualty Underwriting for Hartford, Paul Snodgrass, took the stand. He produced the Hartford file and under direct examination, he said that it did not contain any of the certificates of insurance issued through Ogus for Lesmark during the critical period (JA 275). Towards the conclusion of his direct examination, he was asked by his attorney whether or not Hartford was requested *not* to add property damage coverage to the MCS policy of Lesmark, to which he replied yes. (JA 277) On cross-examination, however, this misleading question was corrected and it was shown that the MCS policy on which property damage coverage was not requested, was another policy issued by Hartford after the loss. Moreover, it was further brought out that Mr. Abrams had a policy with

another company *containing* property damage coverage (JA 278-279, 139). Again much to the embarrassment of Mr. Snodgrass, the certificates which he said were not in his file, under direct questioning, were found during a recess attached to other policies in his file (JA 278). His direct testimony was then corrected (JA 277-279).

This witness also testified that Hartford issued other policies to Lesmark through Ogus for various types of coverage including automobile, burglary, hold-up, workmen's compensation (JA 280). A memorandum was then identified in which there was a specific request by Ogus to add the coverage required in the specifications for The Flower Shop job to the Lesmark policy dated one day after the loss (JA 140).

At the conclusion of Mr. Snodgrass's testimony and after the release in question was introduced, the evidence concluded and the court, following a hearing, made its Findings of Fact and Conclusions of Law (JA 98-105).

The court found, *inter alia*, that there was no legal duty imposed on Ogus to provide Lesmark with any specific coverage except the general property damage liability coverage and no duty to provide him with coverage for damage caused by excavation (JA 103). It found further that the release was an effective bar to the present action by Aetna (JA 104). Judgments for the garnishees, Ogus and Hartford, were entered in each suit on January 23, 1967 (JA 104-105). Notices of appeal from these judgments were filed on February 12, 1967 (JA 105).

#### STATEMENT OF POINTS

The points on which appellant intends to rely on appeal are that the court below erred in finding:

1. That there was no legal duty imposed upon the insurance broker, Harris & Ogus, Inc. or any of its agents, servants or employees to provide insurance coverage for Lesmark, Inc.

against the hazards arising from engaging in excavation work under the facts and circumstances of this case.

2. That the general property damage liability coverage as was provided Lesmark, Inc. did not afford coverage against the claims of Pryce and Ash.

3. That Aetna Casualty and Surety Company had no standing, right or interest which prevented Lesmark, Inc. from settling its claims against Harris & Ogus, Inc. for \$1,500.00.

4. That the release executed by Lesmark, Inc. in favor of Harris & Ogus, Inc. extinguished all claims of Lesmark, Inc. or Aetna Casualty & Surety Company against Harris & Ogus, Inc. and Hartford Accident & Indemnity Co.

#### SUMMARY OF ARGUMENT

An insurance agent or broker (Ogus) who held himself out as a skilled insurance adviser and who is relied on as such by a customer (Lesmark) to obtain property damage liability insurance for its operations in the construction business, is under a duty to procure on request, such property damage liability insurance that is adequate to serve the customer's needs. If there is a limitation of coverage directly affecting its customer's operations in a standard property damage liability clause which the agent ordered, such limitation should be disclosed to the customer. Ogus's failure in this regard renders it and Hartford, as Ogus's principal, liable for Lesmark's uninsured financial loss, to which Aetna is equitably subrogated.

A release of a claim for \$25,581.98 for the token sum of \$1,500.00 between Ogus and the tortfeasor (Lesmark) with notice of the subrogation rights of Aetna does not extinguish Aetna's rights to recover against Ogus and Hartford. Such a release, as to Aetna, is ineffectual and void.

## ARGUMENT

## I

**The Agent, Ogus, an Insurance Adviser to Lesmark With Knowledge That Lesmark Was Engaged in the Construction Business, Had a Duty To Provide Adequate Property Damage Liability Coverage for Lesmark's Operation When So Requested**

- A. Ogus failed to provide adequate coverage when requested or to advise Lesmark of the limitation in his policy affecting his operations which resulted in a substantial uninsured loss.

There appears little, if any, dispute in the record that Lesmark (Abrams) relied on the expertise of Ogus for insurance coverage for the construction jobs that Lesmark was engaged in from early February, 1959 through July, 1959 when The Flower Shop job was under construction. This reliance dates back to 1953 but the critical period is between the aforementioned dates. The evidence disclosed that Abrams dealt only with Ogus; and that Fineman, vice-president of Ogus, admitted that he would advise Lesmark as to his insurance needs when informed of the particular work Lesmark was engaged in (JA 5, 197, 198, 217).

A layman is not expected to comprehend fully the esoteric language employed by the insurance industry in its policies and he necessarily relies in most instances, on the advice of his insurance agent. This is common practice. When one asks for property damage liability coverage after conferring with his agent and after being advised that he has such coverage, might he rightfully assume that any property damage caused by him in his operations is covered up to the limits of his policy? If it is an automobile policy, then it should cover property damage caused by the operation of his automobile. Similarly, if a garage liability policy then property

damage caused through the operation of the garage. If a contractor's policy such as this, then property damage caused during construction. But, it is claimed here that property damage caused by excavation, an integral part of the construction process, requires a special endorsement. If this is so, Lesmark should have been advised so that he could order such coverage.

Ogus rejoins with the statement he did not know Lesmark was engaged in excavation. He should have inquired! For how would Abrams, a layman even suspect that such an exclusion existed. A reading of the policy as hereinafter explained, does not clarify the situation.

It is indeed strange that Fineman's recollection as to what was discussed between Abrams and him concerning The Flower Shop job was scant and yet the day after the loss, the *specific* insurance requirements for this job were requested to be added by Ogus to the then existing MCS policy for Lesmark (JA 129, 140). Without a reading of the insurance specifications, this could not have been done, for as Abrams testified, this was the only job in which \$150,000.00 property damage coverage was required (JA 244). Although Abrams was engaged in more extensive construction work since February, 1959 and relied on the expertise of Ogus in furnishing him with his insurance needs, he was in fact, according to Ogus and Hartford, partially uninsured for a very important phase of his work for which omission, as in this case, he would incur substantial loss. Clearly, Ogus who knew of such a limitation in the standard property damage liability coverage should first of all, after he was requested to furnish property damage liability coverage, inquire as to whether Lesmark did any of his own excavation work and when he found out that he did, then he should have advised him that a special endorsement for such coverage should be added to his policy for

him to be fully covered for this aspect of his work. Indeed, this is not more than what could be reasonably expected of a skilled insurance agent.

The duty of an agent or broker, such as in this situation, has been defined in *Ryder v. Lynch*, 42 N.J. 465, 201 A.2d 561, 569 (1964):

"... [A]n insurance broker, in dealing with his clients, ordinarily invites them to rely upon his expertise in procuring insurance that best fits their requirements. It is not necessary that the client in order to establish a duty to prove that he laid out for the broker the elements of a contract of insurance. . . . Moreover, if the broker agrees to obtain or try to obtain the coverage he knows or should know the principal seeks, and he finds that he cannot procure it, he is bound to notify his principal with dispatch."

The applicable rule is stated also in Meckem Outlines of Agency (Fourth Edition, 1952, Section 525) is as follows:

"§ 525. *Special skill required in some cases.*

There are many cases, however, wherein more than the skill possessed by the ordinary man may reasonably be required. Thus where the agent is employed and undertakes to serve in a capacity which implies the possession and exercise of special skill, as, for example, when an attorney at law, a physician, a broker, etc., undertakes to do some act in the line of his special calling, then the skill ordinarily possessed and exercised by persons pursuing that calling may reasonably be required.

In *Hardt v. Brink*, 1961, D.C. Wash., 192 F. Supp. 879, the defendant was engaged in the manufacturing business in Seattle and the defendant was in the insurance business and procured for plaintiff all of his insurance including fire insurance on the

stocks of goods of the corporation, comprehensive liability insurance, etc. They had a long-standing business relationship for this purpose. In the latter part of 1956 the plaintiff entered into a written lease of a building then under construction, which lease agreement did not contain a provision for exonerating the lessee from liability for damages caused by fire, nor did it contain a provision whereby the lessee was extended coverage under the lessor's fire policy. The plaintiff's own comprehensive liability insurance policy exempted the insurer from property damage liability to property rented or leased by the insured. Before moving into a portion of this building, the plaintiff advised the defendant that the new building was going to be leased but he did not furnish him with a copy of the lease or advise him of its terms. Neither did the defendant request a copy of the lease or seek information as to its conditions.

In July, 1957, a fire broke out and the premises occupied by the plaintiff was destroyed and he sustained an uninsured loss in the sum of \$41,954.24. He then brought suit against his agent for breach of duty he had assumed. The Court in finding for the plaintiff, stated on page 881:

"Whether defendant intended to act as a consultant and counselor as well as a solicitor of insurance is not clear. But it is clear that through the designations on his letterheads and the stickers he attached to policies issued by his office defendant held himself out to be an insurance expert. Under the evidence I am convinced that by his conduct and business practices defendant permitted a reasonable inference to be drawn by his customers, such as plaintiff, that he was a person highly skilled as an insurance advisor and that plaintiff relied upon him as such. Under these circumstances defendant assumed a duty to advise plaintiff as to his insurance needs in connection with his business, particularly where such needs have been brought to defendant's attention."

\* \* \*



(p. 882)

"As I have found that defendant did assume an affirmative duty to advise plaintiff the remaining question is, Should defendant, when he learned of the lease arrangement, have examined the lease for potential liability and advised the plaintiff to protect himself by insurance?"

\* \* \*

"I therefore conclude that defendant was under a duty to advise plaintiff as to his potential liability under the lease and to recommend insurance protection therefor. I further find that defendant breached this duty when he failed to so advise plaintiff and had such advice been given insurance coverage substantially in excess of the amount paid by plaintiff would have been secured. Thus, the defendant's negligence was the proximate cause of plaintiff's financial loss.

For a discussion of an insurance broker or agent's liability under various situations see the annotation at 29 ALR 2d commencing on page 111 entitled "Duty and liability of insurance broker or agent to insured with respect to procurement, continuance, terms and coverage of insurance policies."

- B. Any ambiguity in the policy with respect to the scope of property damage liability coverage should be resolved against the insurer.

The property damage liability coverage reads:

Coverage B — Property Damage Liability: To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the hazards hereinafter defined.

The particular exclusion L reads:

This policy does not apply:

\* \* \*

(1) under coverage B, with respect to division 1 of the Definition of Hazards, to injury to or destruction of any property arising out of (1) blasting or explosion, other than the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment, or (2) the collapse of or structural injury to any building or structure due (a) to excavation, including borrowing, filling or back-filling in connection therewith, or to tunneling, pile driving, coffer-dam work or caisson work, or (b) to moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof; provided, however, part (1) or part (2) of this exclusion does not apply to operations stated, in the declarations or in the company's manual, as not subject to such part of this exclusion;

But when you read the limiting language at the end of the exclusion L which states that it does not apply to operations in the declaration, as being excluded from this exclusion, and in the declarations is typed "construction operations", are construction operations as such excluded from this exclusion? Hartford in answer to this query suggests that the term "construction operations" on the declaration should be followed by "including excavation", for coverage to apply (JA 159, 253-256). Perhaps this insertion would be clearer but Clause L when read with the declaration is susceptible to more than one interpretation and this ambiguity should be resolved against the insurer. If language in an insurance policy is reasonably open to two constructions, the most favorable to the insured will be adopted. *Pennsylvania Indemnity Fire Corp. v. Aldridge*, 1941, 73 App. D.C. 161, 117 F.2d 774; *Buchanan v. Mass. Protective Ass'n*, 1955, 966 U.S. App. D.C. 144, 223 F.2d 609.

This being so there would be coverage for the property damage caused.

It was developed through the testimony of Fineman and Snodgrass that the premium for the MCS policy issued to Lesmark, is determined through periodic audits by Hartford (JA 266-267). The Lesmark operations are checked and payroll ascertained, etc. and the premium is then determined. Most significant in the May audit preceding the July accident of 1959 is a premium charge for excavation (JA 162).

## II

### Aetna's Rights Cannot Be Defeated by a Release Executed by Lesmark in Favor of Ogus

- A. Subrogation is an equitable right and it applies where one party is required to pay a debt for which another is primarily answerable.

By virtue of the judgment in the suit of *Lesmark v. Pryce, et al.* where there was an adjudication of negligence on the part of Lesmark, which proximately caused the property damage in question, and a further adjudication that Lesmark was primarily responsible as between it and the Charrons, it would follow that Aetna's payment of the judgment for the Charrons, had the effect of extinguishing Lesmark's debt to Pryce for which Lesmark was primarily answerable. Accordingly, Aetna obtained an equitable right of subrogation and stands in the shoes, so to speak, of Lesmark in seeking to satisfy the aforesaid judgments from other parties. (See: *Thomas v. Otis*, 1961, 199 F. Supp, affm'd *sub nom Nationwide Mutual Insurance Co. v. Thomas*, 1962, 113 U.S. App. D.C. 160, 306 F.2d 767.) It will be contended by the appellees that the subrogation rights of Aetna were limited to the rights of the Charrons only, but the doctrine of equitable subrogation is not applied strictly nor technically for its purpose, being equitable in nature, is to afford justice where the circumstances demand it. A good statement of this principle is found

in the case of *Washington Mechanics' Sav. Bank v. District Title Insurance Co., et al.*, 65 F.2d 827 at 829:

"Subrogation is an equitable right and is applicable where one party is required to pay a debt for which another is primarily answerable and which the latter should in equity discharge. The remedy cannot, as a matter of right, be invoked without regard to the circumstances of the particular case. It can be invoked only in cases where justice demands its application and where the equities of the party asking subrogation are greater than those of its adversary."

Moreover, this doctrine is liberally applied in federal courts. *Burgoon v. Lavezzo*, 68 App. D.C. 20, 92 F.2d 726, 113 ALR 944.

With respect to Aetna's status as a real party in interest to enforce its subrogation rights, this court, speaking through Judge Fahy in *Link Aviation, Inc. v. Downs*, 1963, 117 U.S. App. D.C. 40, 325 F.2d 613, 614:

"It is undisputed that when an insurer has paid the full amount of a loss suffered by the insured, the insurer becomes subrogated to the full extent of the insured's claim against the one primarily liable for the loss, and that in any suit to enforce the claim the insurer is the only real party in interest. *United States v. Aetna Cas. & Sur. Co.*, 338 U.S. 366, 70 S. Ct. 207, 94 L. Ed. 171 (1949)."

- B. The release between the agent and the tortfeasor does not extinguish the claims of the real party in interest.

Once having established that the Aetna's equitable subrogation rights and that it is a real party in interest for which the third-party action against the agent was prosecuted, a release executed between the agent and the tortfeasor is ineffectual and void as against Aetna.

In *Bahn v. Shaley*, D. C. App. 1956, 125 A.2d 678, 679, the Court stated:

"The question presented is whether the rights of an insurer subrogee against a wrongdoer may be defeated by the wrongdoer's procurement of a full release from the insured subrogor after receiving notice of the insurer's subrogated rights. We think not. The right of subrogation is based upon principles of equity and natural justice, and courts have liberally applied the principle of subrogation for the protection of those who are its natural beneficiaries. . . ."

\* \* \*

"While the decisions have not been uniform, the general rule seems to be that where the wrongdoer produces a release from the insured with knowledge that the insurance has been paid, the release is no bar to an action by the subrogee insurer against the wrongdoer."

In *Cleveland v. Chesapeake and Potomac Telephone Company*, 225 Md. 47, 169 A.2d 446, 448 (1961), the court held that an insurance company or wrongdoer could not claim benefit of a release against the claim for contribution when it was on notice that the release purported to extinguish the claim of the subrogee. The court stated:

"The cases and text writers generally take the position that where third parties, who may be liable to an insured for a loss, effect a settlement with the latter and obtain a release from all liability with knowledge of the fact that an insurer has already paid the amount of its liability to an insured, the settlement and release will not bar the assertion of the insurer's rights of subrogation. The reasoning seems to be that the release is a fraud on the insurer and constitutes no defense against it in an action to enforce its rights of subrogation. See 8 Couch, In-

insurance § 4092; . . . cf. 2; Richards, Insurance (5th Ed.) § 196."

Moreover, the release, executed by Ogus and Lesmark, has a specific clause which gives the right to Lesmark to proceed with his action against Hartford. Hence, Hartford cannot contend that this release is a bar to the present action against it (JA 171). *Martello v. Hawley*, 1962, 112 U.S. App. D.C. 129, 300 F.2d 721; *McKenna v. Austin*, 1943, 77 U.S. App. D.C. 228, 134 F.2d 659.

With respect to the amount of the consideration, namely \$1,500.00, the implication of fraud is especially strong where a wrongdoer settled the claim for an amount far less than the actual damage. 8 Couch, Insurance § 2201.

On the question of notice, Ogus was aware not only from the time it received the letter sent by counsel for Aetna (JA 126) of Aetna's subrogated rights, but also from the opinion of this court in *Lesmark v. Pryce*, *supra* in which the issues involving the Charon's insurance carrier are discussed.

Despite this knowledge that the real party in interest was Aetna who paid the judgments in *Pryce* and *Ash* and who was to be reimbursed out of the proceeds of any settlement or judgment in these actions, counsel for Lesmark and Ogus proceeded to attempt to dispose of this litigation by way of a token settlement, namely \$1,500.00 which, as the evidence disclosed, was to be applied as a fee to Mr. Barker, the attorney for Lesmark (JA 126, 133). The court nevertheless found there was no fraud on the part of Lesmark (JA 103), and held the release to be valid as against the claims of Aetna. This was in error.

## CONCLUSION

The Court below erred in holding that Ogus had no duty to provide insurance coverage which would insure Lesmark's liability for damage caused by excavation and it also erred in holding impliedly, that Ogus had no duty to advise Lesmark of the limitation in the standard property damage liability clause Ogus ordered under the circumstances of this case. The release in question made with knowledge of Aetna's equitable subrogation rights, between Ogus and Lesmark, the consideration for which was to be applied as a fee to counsel for Lesmark, was clearly a nullity as against the rights of Aetna and therefore, it was not a bar to these actions.

Accordingly, the judgments below should be reversed, and judgments entered for appellant against appellees in each case in the total sum of \$25,581.98 with interest from May 8, 1964.

Respectfully submitted,

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BRIEF FOR APPELLEE  
HARTFORD ACCIDENT AND INDEMNITY COMPANY

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20858

AUG 23 1967

AETNA CASUALTY AND SURETY COMPANY

v.

WALTER OGUS, INC. and HARTFORD ACCIDENT AND  
INDEMNITY COMPANY, *Appellees.*

No. 20859

AETNA CASUALTY AND SURETY COMPANY, *Appellant,*

v.

WALTER OGUS, INC. and HARTFORD ACCIDENT AND  
INDEMNITY COMPANY, *Appellees.*

Appeal from the United States District Court for the  
District of Columbia

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### QUESTIONS PRESENTED

I. Whether a contractor, insured under a policy which excludes coverage for loss arising out of excavation or the shoring or underpinning of any building, has a claim against his insurance agent and his insurer when the contractor's liability to third parties has been judiciously determined to rest upon his negligence in causing numerous pits or excavations to be dug by hand under party walls.

II. Whether such a contractor, against whom there exists an unsatisfied and unexecuted upon judgment for indemnity in favor of his employer-owner, may settle and release his claim against his insurance agent so as to thereafter bar the assertion of the same claim by the insurer of the employer-agent against the insurance agent who, much subsequent to notice of the settlement and release and payment to the contractor, issues a writ of attachment.

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# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 20858

AETNA CASUALTY AND SURETY COMPANY, *Appellant*,

v.

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AETNA CASUALTY AND SURETY COMPANY, *Appellant*,

v.

WALTER OGUS, INC. and HARTFORD ACCIDENT AND  
INDEMNITY COMPANY, *Appellees*.

---

Appeal from the United States District Court for the  
District of Columbia

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BRIEF FOR APPELLEE  
HARTFORD ACCIDENT AND INDEMNITY COMPANY

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## COUNTERSTATEMENT OF THE CASE

The action below was a garnishment proceeding in which the appellees, who were the garnishees in the District Court, denied any indebtedness to the appellant-garnishor. The garnishor traversed answers of the garnishees to inter-

rogatories issued in aid of the writ of attachment. The matter proceeded in regular course through pretrial and the issues joined were tried by the Court, sitting without a jury. Judgment was entered for the garnishees.

While the appellant's brief does not question in any respect the sufficiency of the evidence to support the findings made by the District Court, the appellant has recited a view of the facts which in many instances either ignores those findings or takes great liberty with respect to them. Consequently, to accord sufficient respect to the findings a counterstatement of facts is required.<sup>1</sup>

Michael Abrams had been a general contractor for several years. In early 1959 he commenced to do business under a corporate form known as Lesmark, Inc. (J.A. 215-216). He undertook the construction of a building at 1919 Eye Street, N.W., in the City of Washington, on land owned by Walter S. and Marie L. Charron and situated between buildings owned by Isabel C. Pryce and Robert Ash (J.A. 25-27).

On July 28, 1959, Lesmark, Inc., caused numerous pits or excavations to be dug by hand under the party walls of the Pryce and Ash buildings at points other than where the plans called for footings (J.A. 100). No support was provided the party walls by Lesmark in connection with these excavations which were made in violation of applicable building regulations of the District of Columbia (J.A. 100). As a consequence, the abutting buildings of Pryce and Ash sustained damage for which the Charrons and Lesmark were found liable—the former by intendment based upon the negligence of Lesmark (J.A. 32, 100). The judgments were paid on behalf of the Charrons by Aetna Casualty & Surety Company, their public liability insurer

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<sup>1</sup> Rule 52, F.R.C.P., recites that "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."



(J.A. 99). A judgment for indemnification was entered on behalf of the Charrons against Lesmark (J.A. 99).

As part of the original actions by Pryce and Ash against the Charrons and Lesmark, the latter filed a third-party action against Walter Ogus, Inc.,<sup>2</sup> a firm engaged in selling insurance for various insurers (J.A. 207), and against Hartford Accident & Indemnity Company.<sup>3</sup>

These actions contended that, through the fault or neglect of Ogus and Hartford, Lesmark had not been furnished property damage insurance for its construction work at 1919 Eye Street, N.W., and, as a consequence, would incur resulting financial loss if Pryce and Ash prevailed (J.A. 12, 57). These third-party proceedings, however, were severed and stayed pending the termination of the actions of Pryce and Ash (J.A. 24).

Following the entry of a judgment on November 21, 1962 in favor of the Charrons against Lesmark for indemnity and the payment of the Pryce and Ash judgments against the Charrons by Aetna on May 22, 1963, neither the Charrons nor Aetna undertook any action to execute upon the judgment of indemnity to collect it until September 14, 1965, when the present garnishment proceedings were commenced (J.A. 100-101). In the meanwhile both the Charrons and Aetna knew of the pendency of the actions by Lesmark against Ogus and Hartford and knew that these actions were proceeding to hearing (J.A. 100-101).

On March 4, 1965, attorneys for Lesmark and Ogus agreed to a payment in settlement of Lesmark's claim against Ogus and counsel for Aetna was notified of this fact. Aetna's counsel obtained a 30-day continuance of the

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<sup>2</sup> The action was first brought against Harris & Ogus, Inc. The present appellee is the successor to that firm (J.A. 11, 95).

<sup>3</sup> Ogus impleaded Hartford by way of a "fourth party" Complaint. Lesmark later amended its third-party action to add Hartford as an additional third-party defendant (J.A. 17, 34).

trial of the third-party action so as to afford him the opportunity to assert such rights as Aetna may have had against the parties to this garnishment proceeding (J.A. 126). An appropriate release was signed on March 8, 1965,<sup>4</sup> and a praecipe dismissing the Lesmark action with prejudice against Ogus was filed on March 29, 1965 (J.A. 101). This settlement was not challenged on the grounds of inadequacy, fraud or overreaching by the Charrons or Aetna or by Lesmark (J.A. 95, 103).<sup>5</sup> Aetna failed for six months after knowledge of settlement to issue any process in aid of the execution of its judgment.

As a consequence, Ogus and Hartford raised the release, dated March 8, 1965, as an additional bar to any garnishee's liability (J.A. 95-96).

Upon the trial of the garnishment action, the evidence disclosed, and the Court found, that Michael Abrams had possessed for several years prior to 1959 an insurance policy with Hartford, No. 42 MCS 601753 (hereinafter the "MCS" policy), which insured against bodily injury liability but which, however, did not include coverage for property damage (J.A. 102, 109). This circumstance had resulted from the specific request of Michael Abrams, who stated he felt he did not need such coverage (J.A. 216, 228-229).<sup>6</sup>

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<sup>4</sup> The release purported to reserve a right to proceed against Hartford, who made no payment (J.A. 172).

<sup>5</sup> For this reason, it is difficult to justify the suggestion of fraud found on page 21 of Appellant's Brief. At the pretrial of the garnishment case, the challenge which Aetna made to the release was quite specific. It did not include fraud (J.A. 95), which must be stated with particularity. See Rule 9(b), F.R.C.P.

<sup>6</sup> Although Abrams did not have property damage coverage, the insuring language for property damage coverage and its exclusions was at all times present within the four corners of the document which he possessed. If Abrams had requested property damage, Abrams could have referred to the language of the policy in his possession to learn the scope of coverage (J.A. 102).

In February, 1959, however, in response to a demand from Potomac Electric Power Company, for whom he desired to undertake some work, Abrams requested property damage coverage from Ogus who, in turn, informed him that such coverage was available, that it had been ordered from Hartford and that Lesmark would be covered under its outstanding MCS policy (J.A. 101).<sup>7</sup>

The MCS policy, however, contained a relevant exclusion. Under an obvious caption entitled "Exclusions", the policy language provided that the policy did not apply to property damage liability "(1) . . . with respect . . . to injury to or destruction of any property arising out of . . . (2) the collapse of or structural injury to any building or structures due (a) to excavation, including borrowing, filling or backfilling in connection therewith, or to tunneling, pile driving, coffer-dam work or caisson work, or (b) to moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof . . ." (J.A. 102, 108).<sup>8</sup>

Ogus was not informed, and did not know, that Lesmark intended to engage in excavation work or that it in fact

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<sup>7</sup> A great deal of trial time was devoted to a dispute between Ogus and Hartford as to whether property damage coverage had been ordered generally, or simply with respect to specific jobs, viz., that of Potomac Electric. Ogus claimed that such coverage had been ordered generally. Hartford denied such an order and contested the authority of Ogus to bind Hartford in such a general manner.

The trial court found that "inadequate and confusing instructions to secure the change in insurance coverage were communicated . . . to Hartford" but that, nevertheless, Ogus had authority to bind Hartford and had done so when it informed Abrams that Lesmark was covered for property damage generally (J.A. 101-102, 285).

<sup>8</sup> A saving proviso at the end of this exclusion was not shown to be applicable and in fact is not, as will be hereinafter demonstrated.

did so (J.A. 102).<sup>9</sup> Lesmark had not requested excavation coverage and Ogus did not order it from Hartford (J.A. 102). As a consequence, no attempt was made to remove the excavation exclusion from the Lesmark MCS policy (J.A. 102).

Since the damage which had exposed Lesmark in the first instance to liability to Pryce and Ash resulted from excavation work undertaken by Lesmark on the Charron property, such loss was not covered by the terms of the Hartford property insurance coverage which Ogus had ordered (J.A. 103). Moreover, the failure of Lesmark to possess such insurance coverage as would have protected it from the loss resulting from excavation work was not the consequence of any negligence, breach of duty or breach of contract on the part of either Ogus or Hartford (J.A. 103).

On the basis of such findings the Court concluded: (1) that there were no grounds for imposing any liability upon either Ogus or Hartford for the lack of excavation insurance coverage in the Lesmark policy, and (2) that Ogus and Hartford were validly released from any liability to Lesmark or Aetna.

### SUMMARY OF ARGUMENT

1. The appellant does not challenge the findings of fact of the District Court or the sufficiency of the evidence to support those findings. As a consequence, argument in

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<sup>9</sup> Whether Lesmark itself engaged in excavation work on Eye Street was uncertain. Abrams testified at first: "I was going to do it [the excavation work]." "We did our own footing work" (J.A. 221). He later said that he hired a man to do the excavation work and had required "our sub-contractor to give us a certificate of insurance" (J.A. 245-246). This would indicate that Abrams sought to have his excavation subcontractor provide insurance coverage for the excavation undertaken. The trial judge found Abrams to be an unreliable witness (J.A. 285). The Ogus officer charged with responsibility for the Lesmark account stated: "I was not aware of the fact that he did excavation . . . . He never told us that he was doing any excavation" (J.A. 199). The trial court's finding on this important issue—whether Ogus knew that Lesmark was engaged in excavation work—was therefore based upon adequate record evidence.

this Court must proceed upon the assumption that Ogus did not know that Lesmark had need of such insurance coverage as would save it harmless from losses due to excavation work and that accordingly Ogus was not negligent in failing to procure or order such coverage. It must be further taken that no fraud or secreting of assets was practiced upon Aetna in connection with the settlement and release of Lesmark's highly tentative claim against Ogus.

2. Since there was no negligent failure to include excavation coverage in the insurance coverage furnished Lesmark by Ogus and Hartford, the only relevant question is whether the policy issued covered the loss sustained. Exclusion (1) of the policy clearly withdraws coverage for excavation work from which Lesmark's precise loss arose.

3. In any event, the question of negligence *vel non* on the part of Ogus in failing to procure insurance adequate to cover Lesmark's loss is not a matter of concern by Hartford. No independent ground of liability to Lesmark existed on the part of Hartford. Under the proof as developed, Hartford's liability could arise only under the principle of *respondeat superior*. As such, Hartford has a right of indemnity against Ogus. Moreover, Ogus, in the matters about which complaint is made, acted as the agent of Lesmark, not Hartford.

4. Since Aetna did not undertake to execute on its judgment for indemnity against Lesmark even after having been informed that Lesmark and Ogus intended to and were in the process of settling their differences, the release by Lesmark of any asserted liability against Ogus also operates to bar Aetna's subsequent assertion of the same claim, derived from Lesmark against Ogus.

5. Since the claimed liability of Hartford rested solely upon an asserted vicarious liability for the conduct of Ogus, a release of the liability of the agent releases as well the liability of the principal.

## ARGUMENT

### **I. The Loss Sustained by Lesmark Was Not Insured Against by Hartford Under Property Damage Liability Coverage.**

There is no dispute by any party of the fact that property damage coverage only was ordered by Ogus from Hartford. No party contended that any request was ever made of Hartford to remove all or any part of the language of Exclusion (l) of its MCS policy, or that Hartford was requested to provide insurance coverage for excavation operations.

Accordingly, in considering any direct liability of Hartford to Lesmark,<sup>10</sup> recourse must be had to the terms of the outstanding MCS policy.

Three sections of that policy are in point: First: Under "Coverage B—Property Damage Liability", the insurer agreed:

"To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the hazards hereinafter defined." (J.A. 107)

Second: Under the caption "Definition of Hazards" are listed four divisions, one of which is applicable:

"Division 1—Premises—Operations: The ownership, maintenance or use of premises, and *all operations.*" (Emphasis supplied) (J.A. 107)<sup>11</sup>

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<sup>10</sup> Aetna can possess no rights against the garnishees greater than those possessed by Lesmark.

<sup>11</sup> The operations covered are those stated in the declarations. They include "Carpentry in the construction of detached private residences for occupancy by one or two families and private garages in connection therewith; clerical office employees; vacant land—*excluding real estate development property, and carpentry.*" (J.A. 112, 117, 158) (Emphasis supplied)

Third: Under the caption "Exclusion," the policy provides:

This policy does not apply: "[ (a) through (k) not applicable] (1) under coverage B, with respect to division 1 of the Definition of Hazards, to injury to or destruction of any property arising out of (l) . . . [not applicable] . . . (2) the collapse of or structural injury to any building or structure due (a) to excavation, including borrowing, filling or back-filling in connection therewith, or to tunneling, pile driving, cofferdam work or caisson work, or (b) to moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof; provided, however, part (1) or part (2) of this exclusion does not apply to operations stated, in the declarations or in the company's manual, as not subject to such part of this exclusion" . . . . (J.A. 108).

The last of the three is the most important. The language of Exclusion (l) clearly excludes from the property damage coverage afforded by the policy the very acts for which Lesmark was found to be liable to Pryce and Ash and to the Charrons.

It is obvious, and the parties agreed, that each and all were bound and concluded by the Findings of Fact made in the *Pryce* and *Ash* cases (J.A. 100). Two of those findings are clearly in point (J.A. 27):

"11. On July 28, 1959, at about 7:30 A.M., the defendant, Lesmark, Inc., caused numerous pits or excavations to be dug by hand under both of the said party walls. These pits or excavations were made at points other than where the plans called for footings to be placed along the faces of the party walls and were directly under the two party walls. No support of any kind was provided by Lesmark, Inc. for the said party walls in connection with these excavations.

"12. The said pits or excavations under the party walls were in violation of the plans and specifications and of the applicable Building Regulations of the District of Columbia Government. Lesmark, Inc. was



negligent in making these excavations and this negligence was the proximate cause of the damage resulting to the buildings of the two plaintiffs.”

As a consequence, the District Court, in the present matter, properly found (J.A. 102-103):

“17. The liability which has been placed upon Lesmark, Inc. resulted from excavations which were undertaken on the property owned by Walter S. and Marie L. Charron and, consequently, is not covered by the terms of the insurance contract, policy No. 42 MCS 601753, by reason of Exclusion l of the policy.”

This should end the matter except Aetna would read the proviso which concludes Exclusion (l) to its advantage. Aetna seeks to raise an ambiguity of meaning. Its argument in this respect, to assure it receives appropriate perception, is here quoted in full from its brief (Page 17):

“But when you read the limiting language at the end of the exclusion L which states that it does not apply to operations in the declaration, as being excluded from this exclusion, and in the declarations is typed ‘construction operations’, are construction operations as such excluded from this exclusion? Hartford in answer to this query suggests that the term ‘construction operations’ on the declaration should be followed by ‘including excavation’, for coverage to apply (JA 159, 253-256). Perhaps this insertion would be clearer but Clause L when read with the declaration is susceptible to more than one interpretation and this ambiguity should be resolved against the insurer.”

This portion of Aetna’s argument does not withstand analysis for several reasons: (1) Hartford’s position is and was not as stated;<sup>12</sup> (2) the error of Aetna’s argument is

<sup>12</sup> The colloquy referred to by Aetna—J.A. 253-256—contains an obvious misreading of the policy language by Aetna’s counsel. Hartford’s counsel did not state the position attributed to him in Aetna’s brief and the Joint Appendix citation does not support the contention made.

based upon the incorrect observation that the words "construction operations" are stated in the declarations under division 1—the only division of the Declarations of Hazards having relevancy.<sup>13</sup> The words "construction operations" are not stated as a declaration under division 1, but rather under "division 3—Independent Contractors", as Aetna's own record citation establishes (J.A. 159); (3) the punctuation of the exclusion's proviso makes it plain that there must be "stated" at one of two places, either "in the declarations or in the company's manual" that the operations are not subject to the exclusion. Since Aetna can point to no such affirmative exclusion of Exclusion (1), one must conclude, as did the trial court, that Lesmark's operations—in the field of excavations—were embraced within the Exclusion.

## **II. The Question of a Duty, If Any, on the Part of Ogus Toward Lesmark Is Not a Matter of Concern to Hartford.**

Aetna, in the place of Lesmark, contends that, under the circumstances of the present case, Ogus owed a duty to Lesmark, which was breached, either to have explained the limitations of the policy to Abrams or to have obtained a special endorsement for Lesmark which would have afforded excavation coverage.

Whatever may be the range of duty on the part of an insurance agent or broker, it is doubtful if that issue is relevant here. Abrams was not an avid buyer of insurance. Ogus, prior to the year of the Lesmark loss, sought to sell Abrams "general property damage coverage" but Abrams decided "I didn't need this" (J.A. 200-201, 228-229). He usually required the building's owner to carry insurance to cover him (J.A. 229). When the owners required him to carry specific insurance coverage, he would buy it for the particular job (J.A. 231). In the very instance involved—the excavation of the Charron property—he had intended to subcontract the excavation

<sup>13</sup> The exclusion applies by its terms only to division 1 problems.

work and to require the subcontractor to furnish Lesmark a certificate of insurance evidencing coverage (J.A. 245).

Although he sought to testify that he had informed Ogus of the Charron job specifications (J.A. 222, 239, 241), Abrams was substantially impeached on this score (J.A. 223, 239, 242, 243, 244, 248), and the Court seriously questioned his credibility (J.A. 285). On the other hand, the Ogus officer involved denied knowledge of the Charron operation (J.A. 259, 261) and specifically denied any knowledge that Lesmark was engaged in excavation work (J.A. 265-266). As a consequence, the District Court found as a fact that Ogus did not have knowledge that "Abrams or Lesmark was engaged in making excavations" or that he "contemplated doing excavation work upon the [Charron] premises" (J.A. 102). The District Court then further found that the failure of Lesmark to have excavation coverage "was not due to any negligence, breach of duty or breach of contract on the part of either Harris & Ogus, Inc. or Hartford Accident and Indemnity Company or any agent, servant or employee of either of them."

Since duties are correlative, it would have seemed reasonable to require from Abrams a greater modicum of cooperation, intelligent foresight and a duty of communication as a condition precedent to the imposition of any liability upon Ogus.

However, this is a matter of argument for Ogus. It is clear that Ogus to the extent that it owed a duty at all to inform its customer or to order adequate insurance was not acting or failing to act on behalf of Hartford as agent for a principal.<sup>14</sup>

<sup>14</sup> This is not to question "binding authority" (J.A. 187-188). The agent may bind a particular insurer by making a specific commitment to a policyholder. But this is different from saying that an independent agent might expose an insurer for whom he writes business to liability for the omissions illustrated by the facts recited in the cases cited by Aetna (Aplt'n. Br. pp. 14-16).

Ogus was known colloquially as an independent insurance agent. It represented a number of different companies (J.A. 207). Abrams had sought out the Ogus agency for his insurance needs (J.A. 189, 224). He was motivated to do so by a family connection (J.A. 224). He had not relied upon a particular insurance company. In fact, he did not know what insurance companies were involved in his affairs (J.A. 226-227). The Ogus agency in 1959 had insured Abrams or Lesmark under six different policies with three different companies (J.A. 208).

Abrams testified that he would discuss his insurance needs with Harold Feinman, an Ogus vice president, or with Harris or Ogus upon whom he relied (J.A. 222, 226). He said he did not care "what company the insurance was placed with" (J.A. 228) . . . "I relied on the man, definitely, but I don't remember the names of the companies" (J.A. 228). When he obtained a contract, he "would call Mr. Feinman or Mr. Harris, or somebody in their office and go over the particular job with them in order to get insurance for that job" (J.A. 228). Feinman, confirming this practice, said that he was "the one who decided what risk would go in what company, and what risk would not go in" (J.A. 208). Feinman would listen to Abrams' requests and "would put these risks in various companies" (J.A. 208).

Ogus, in these circumstances, acted as an insurance broker rather than an agent (J.A. 185). As such, a failure to perform the duties ascribed to him by the appellant would not be imputable to Hartford.

The distinction between an insurance agent and an insurance broker is well put in *Travelers Indemnity Co. v. National Indemnity Co.*, 292 F.2d 214, 219-220 (8th Cir. 1961):

"It may be stated as a general proposition that an insurance agent is a person expressly or impliedly authorized to represent an insurance company in dealing with third persons in matters relating to insurance.

. . . An insurance broker is one who acts as a middleman between the insured and insurer and who solicits insurance from the public under no employment from any special company and who either places an order for insurance with a company selected by the insured, or in the absence of such selection, with a company the broker selects. . . . There is no ironclad rule or standard for determining whether an insurance broker represents the insurer or insured.<sup>15</sup> The question cannot be answered absolutely and resolution thereof depends upon the circumstances of each case. . . . Sound authority supports the proposition, however, that a broker is primarily the agent who first employs him, and *where he is employed to procure insurance, he is the agent of the person for whom the insurance is procured insofar as matters connected with the procurement are concerned.* Unless there are special conditions or circumstances in the case, he is not the agent of the insurer, and he may not be converted into an agent for the insurance company without some action on the part of the company or the existence of some facts from which his authority to represent it as an agent may be fairly inferred." (Emphasis supplied)

Under the facts of that case, an insured had requested an insurance agent who had been servicing his insurance needs for many years to procure certain insurance for leased trucking equipment. Judgment as to the nature and scope of the insurance was left to the agent. The insurance procured, however, possessed a limited and narrow coverage. The court had no difficulty in concluding that the agent, in selecting the applicable coverage, was not acting on behalf of the insurer, but rather acted as agent for the insured.

In the present case, the request for insurance did not originate with Hartford but rather with Abrams, who

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<sup>15</sup> A broker for some tasks, e.g., the collection and remission of premiums; the forwarding of policies and endorsements, may be the agent of the insurer; while for other purposes, e.g., the selection of the insurer; the scope of risk and coverage, may be the agent of the insured.

placed his order with Ogus. Ogus made the determination as to the kind and character of insurance requested. In so acting, Ogus was the agent of Lesmark, not Hartford, and Hartford may not be held accountable for any alleged errors, omissions or negligence on the part of Ogus in the procurement of insurance for Lesmark.

### **III. Lesmark Could Validly Release the Claim It Asserted Against Ogus Without the Concurrence of Aetna.**

Lesmark had no fixed, specific contractual claim against Ogus. Its claim was based upon the asserted failure on the part of Ogus properly to advise and procure appropriate insurance coverage for Lesmark. Such a claim, sounding as it does in negligence, admittedly was subject to many imponderables and possessed no readily ascertainable value. Like other tort claims, its value could range between little or nothing and the full amount of the loss. The amount of the settlement was the product of compromise and the fact that it was substantially less than the full amount of the loss is not indicative, as Aetna suggests (Aplt's Br. p. 21), that there arises from this disparity a strong implication of fraud.

Aetna never claimed or contended at pretrial or trial that fraud was practiced upon it or that there was any overreaching on the part of Ogus (J.A. 95, 103). Aetna's only claim was that the settlement was not made with it and it contravened a stay order on September 22, 1965 (J.A. 95).<sup>16</sup> Moreover, the District Court specifically found:

"There was no fraud or secreting of assets practiced by Lesmark, Inc. upon Walter S. and Marie L. Charron or upon Aetna Casualty and Surety Company in connection with the release, and no claim of fraud is made against either of the garnishees."

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<sup>16</sup> This latter ground may be ignored since the settlement was consummated six months prior to any such order. See Finding of Fact, No. 10 (J.A. 101).

Moreover, Aetna is barred by the Lesmark release because there was a total failure on its part to assert and fix its rights in a timely manner.

Aetna apparently paid the judgments against its insureds Walter S. and Marie L. Charron on May 22, 1963 (J.A. 51). Although possessed of a judgment for indemnity against Lesmark (J.A. 33), and knowing of the pendency of the latter's claim against Ogus,<sup>17</sup> no effort was made by Aetna to enforce its judgment.<sup>18</sup>

The Lesmark actions against Ogus and Hartford were pretried on October 23, 1964 (J.A. 56). On the eve of trial in March, 1965, settlement discussions took place between counsel for Ogus and Lesmark (J.A. 126). Aetna was notified of these discussions (J.A. 126, 177-178), and its counsel procured a 30-day continuance of the trial of the third-party action of Lesmark against Ogus and Hartford "to afford me an opportunity to take appropriate action to protect the interests of Walter S. and Marie L. Charron in aid of the satisfaction of their judgment" (J.A. 126). Aetna was notified that a firm settlement had been agreed upon (J.A. 133) and Lesmark's counsel informed counsel for Aetna that "your client could have any portion of the \$1,500.00 settlement you deemed proper." (J.A. 133). A praecipe was returned to Ogus by Lesmark in March 18, 1965, and Aetna's counsel was immediately informed (J.A. 134).

All these proceedings took place and the 30-day continuance elapsed without Aetna taking any step to execute upon its judgment or to attach credits in the hands of Ogus.

On September 14, 1965, the first and only writs of attachment were issued by Aetna and the present garnishment

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<sup>17</sup> The Charrons were parties to the action.

<sup>18</sup> Although Lesmark had appealed from the judgments entered against it, it had not posted any supersedeas and had not obtained any stay of execution. An order in conformity with the judgment of this Court affirming the prior judgment for indemnity was entered May 8, 1964 (J.A. 52).



proceedings were commenced—six months after the settlement of which Aetna was aware had been consummated.

Although Aetna upon making payment of the Pryce and Ash judgments became subrogated to the rights of the Charrons and became the party entitled to enforce the Charron right of indemnity against Lesmark, Aetna did not by that fact come into legal possession of Lesmark's rights. Aetna was simply a judgment creditor of Lesmark and possessed no right to any particular asset in the hands of Lesmark. To acquire legal rights to particular assets, Aetna was required to execute upon its indemnity judgment. Until it did so, those dealing with Lesmark had the right, absent fraud, to contract with Lesmark for the acquisition of such Lesmark assets as were desired without regard to the claims of creditors who had not acquired any interest in specific property.<sup>19</sup>

A judgment for money is not self executing. Ogus was entitled to assume that Aetna, if so advised, would take appropriate steps to protect any interest it might have in the assets of Lesmark. Neither the garnishees nor the Court was obligated to await Aetna's pleasure before disposing of the third-party claim. For two years and four months Aetna had ignored the Lesmark judgment and had not seemed to attach any validity to the Lesmark claim.

Since Aetna was simply a judgment creditor of Lesmark, until it moved in aid of execution upon its judgment and thereby acquired some vested right in particular property or credits, Ogus was free to settle a claimed liability with Lesmark, especially in the light of the full and timely disclosures made by Ogus to Aetna. Since a writ of attachment did not issue until six months had elapsed after a

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<sup>19</sup> In the District of Columbia a judgment does not create a lien upon personalty, but only upon real estate. D. C. Code (1961 Ed., Supp. V) § 15-102.

A lien upon personalty is created by a writ of *feri facias*, Id., § 15-307; upon credits by a writ of attachment, Id., § 16-546.

settlement of which Aetna was aware had been consummated, Aetna did not possess such an interest as would have prevented Lesmark from releasing and discharging its claim against Ogus.

Accordingly, Aetna's attachment did not reach any claim of Lesmark against Ogus and the Lesmark release was a bar to the assertion by Aetna of the same claim which Lesmark had released.

**IV. Despite Its Terms the Release by Lesmark of Ogus Had the Effect of Releasing Hartford as Well.**

Aetna did not assert or attempt to prove against Hartford any basis of liability toward Lesmark other than a vicarious liability said to arise from the characterization of Ogus as a "general agent" of Hartford (J.A. 94-95, 101-103). No ground of liability has been pressed independent of the conduct of Ogus.

As a consequence, if Hartford had been found liable to Lesmark, such a finding would necessarily have predicated upon Hartford's vicarious liability. Such a finding would have entitled the principal to indemnification from the agent since his liability existed only by virtue of the negligence of the agent. *Aetna Casualty & Surety Co. v. Porter*, 181 F. Supp. 81 (D.D.C. 1960), appeal dismissed by order. D. C. Cir. No. 15664, October 11, 1959. *Nordstrom v. District of Columbia*, 213 F. Supp. 315 (D.D.C. 1963), *aff'd sub. nom. District of Columbia v. Nordstrom*, 117 U.S. App. D.C. 165, 327 F.2d 863 (1963).

Under such circumstances, the release of the agent effects a release of the principal upon the theory that a release of an indemnitor releases as well the indemnitee. *Terry v. Memphis Stone & Gravel Co.*, 222 F.2d 652 (6th Cir. 1955); *Stewart v. Craig*, 208 Tenn. 212, 344 S.W. 2d 761 (1961).<sup>20</sup>

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<sup>20</sup> This case contains a full and logical explanation of the two principles just expounded.

In *Terry v. Memphis Stone & Gravel Co.*, *supra*, it appeared that plaintiff's decedent was killed in an automobile accident when a vehicle in which she was riding was struck by a truck owned by one person, driven by another, and engaged in carrying gravel for the defendant. The plaintiff had, for valuable consideration, executed a covenant not to sue the truck's owner and driver. The Sixth Circuit held that this instrument also effected a release of the gravel company, saying 222 F.2d at 653:

"Inasmuch as the liability alleged against the appellee company rested solely upon the averment that the truck driver was the servant or agent of the appellee company for whose negligence it would be responsible upon the principle of *respondeat superior*, a covenant not to sue the truck owner and driver—appellee's alleged agents—would necessarily release appellee. The case is clearly distinguishable from those cases in which a covenant not to sue one joint tort-feasor does not protect another joint tort-feasor from an action for damages brought against it by an injured party."

Accordingly, since the only basis for an imposition of liability upon Hartford was under the doctrine of *respondeat superior*, a valid release of a claim against Ogus released as well the claim of Lesmark against Hartford.

The cases cited by Aetna, viz., *Martello v. Hawley*, 112 U.S. App. D.C. 129, 300 F.2d 721 (1962), and *McKenna v. Austin*, 77 U.S. App. D.C. 228, 134 F.2d 659 (1943), for the proposition that the saving language of a release or covenant not to sue must be given effect, are not in point. Each case deals with tortfeasors who were concurrently liable to the plaintiff upon grounds independent of the fault or wrongdoing of the other. Neither involves the circumstance, found in the present case, that liability could be visited upon Hartford only because of an alleged error or omission by Ogus. Nor are *Cleveland v. Chesapeake & Potomac Telephone Co.*, 225 Md. 47, 169 A.2d 446 (1961),

and *Bahn v. Shalev*, 125 A.2d 678 (D.C. Mun. App. 1956), in point.

Although these cases hold that a release obtained from a subrogor with knowledge of the subrogee's rights cannot defeat the subrogee's claim, Aetna's reliance is misplaced since it is not the subrogee of Lesmark. Aetna, in these proceedings, was simply standing in the shoes of a judgment creditor seeking to enforce the Charron judgment for exoneration against Lesmark. This is the holding of *Link Aviation, Inc. v. Downs*, 117 U.S. App. D.C. 40, 325 F.2d 613 (1963). Aetna was not the subrogee of Lesmark, certainly in the sense that by the mere fact of payment of the Pryce and Ash judgments it came into immediate and exclusive possession of all Lesmark's claims against third parties. Such a concept would create havoc among creditors having varying priorities.

#### CONCLUSION

Upon both questions—the lack of insurance coverage for Lesmark in the circumstances, and the bar of the release—the District Court correctly decided the matters. The judgments below should be affirmed.

Respectfully submitted,

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Hartford Accident and  
Indemnity Company*



BRIEF FOR APPELLEE

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**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,858

AETNA CASUALTY AND SURETY COMPANY,  
*Appellant,*

v.

WALTER OGUS, INC.

and

HARTFORD ACCIDENT AND INDEMNITY COMPANY,  
*Appellees.*

No. 20,859

AETNA CASUALTY AND SURETY COMPANY,  
*Appellant,*

v.

WALTER OGUS, INC.

and

HARTFORD ACCIDENT AND INDEMNITY COMPANY,  
*Appellees.*

APPEAL FROM THE UNITED STATES DISTRICT COURT  
United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA

FILED AUG 28 1967

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(i)

### STATEMENT OF THE QUESTIONS PRESENTED

In the opinion of appellee Walter Ogus, Inc., the questions presented are:

1. Was there sufficient evidence presented to the trial court to support its decision that an insurance agency which had been requested only to add property damage coverage to an already existing policy of insurance was not negligent and that it had breached no duty to the insured when the insured subsequently sustained a loss through excavation where excavation damages were an express exclusion in the coverage of the policy?

2. Was there sufficient evidence presented to the trial court upon which its decision could be based that tortfeasors who have satisfied judgments against themselves and a joint tortfeasor and their subrogated insurance carrier were only judgment creditors of that joint tortfeasor on cross claim and, as such, had no standing, right, or interest which entitled them to interfere in their judgment debtor's settlement of a disputed claim against another party?



(iii)

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,858

AETNA CASUALTY AND SURETY COMPANY,  
*Appellant,*

v.

WALTER OGUS, INC.  
and  
HARTFORD ACCIDENT AND INDEMNITY COMPANY,  
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No. 20,859

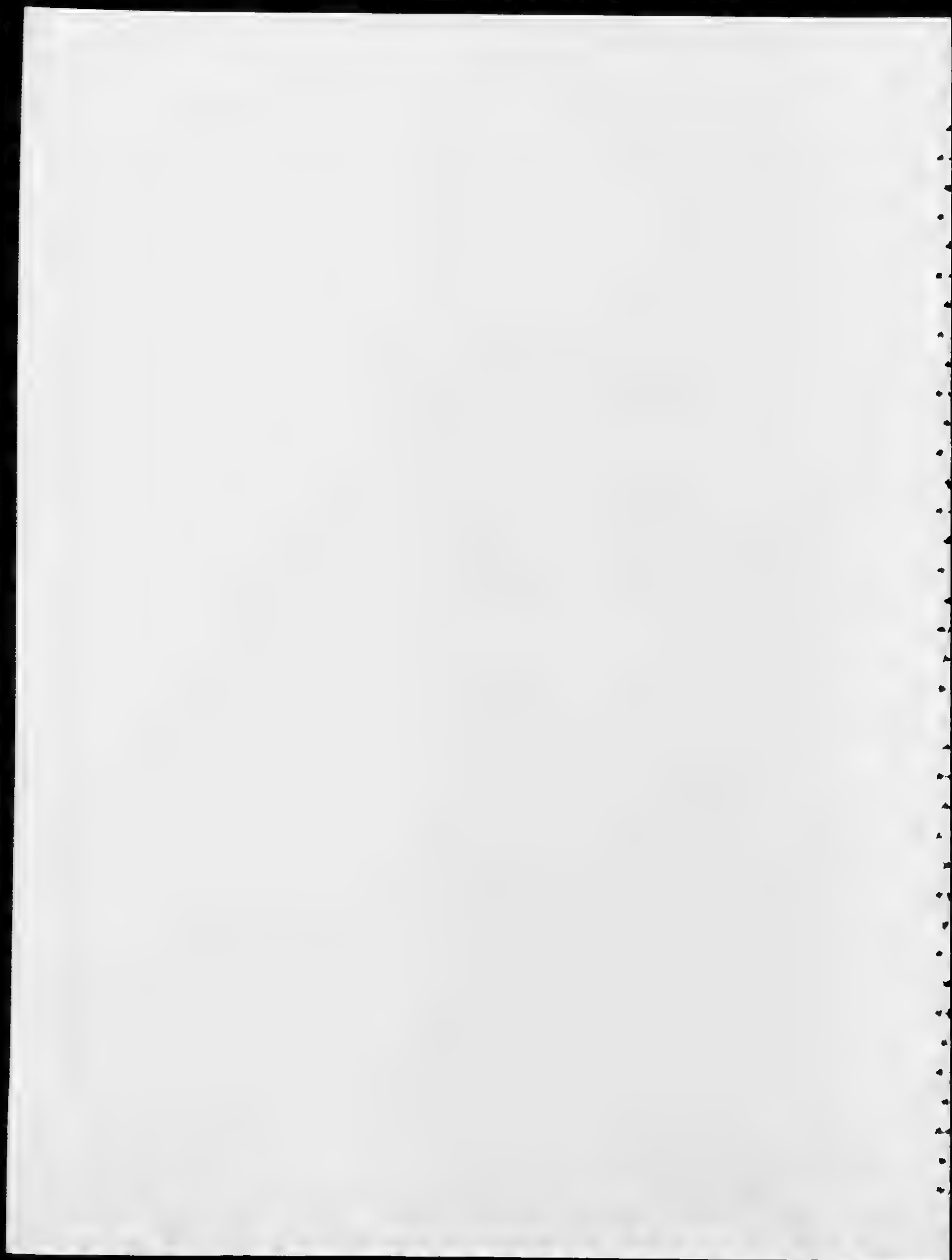
AETNA CASUALTY AND SURETY COMPANY,  
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and  
HARTFORD ACCIDENT AND INDEMNITY COMPANY,  
*Appellees.*

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**BRIEF FOR APPELLEE**



(v)

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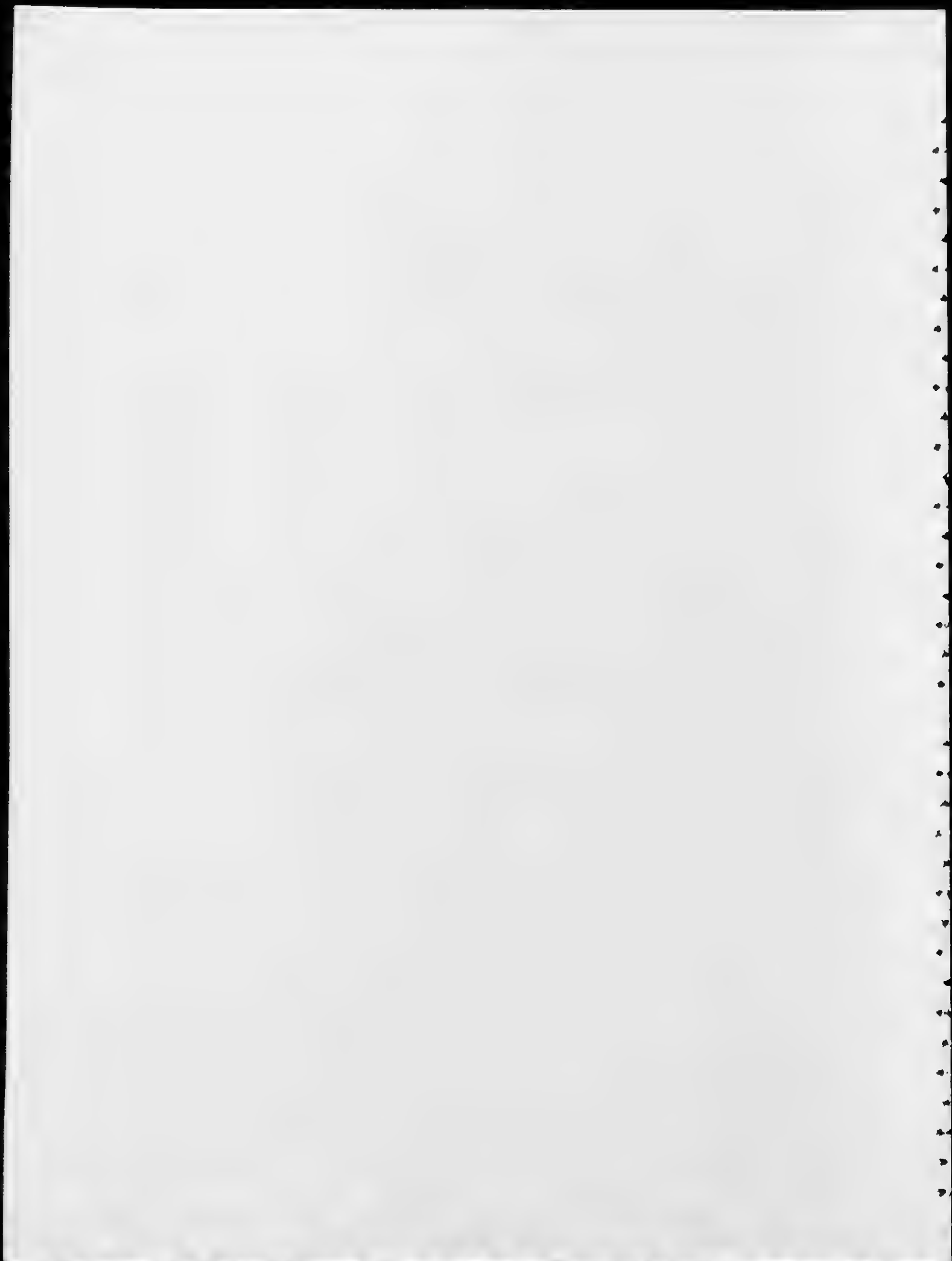
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## COUNTER-STATEMENT OF THE CASE

Appellee Walter Ogus, Inc., agrees in the main with the facts as have been set forth by appellant in its statement of the case but disagrees with the inferences appellant seeks to draw from the recitation of these facts and from the arguments as have been presented by appellant in this portion of its brief.

Appellant carefully omits from its statement of the case the fact that following appellant's payment and satisfaction of the judgments on behalf of Pryce and Ash on May 24, 1963, and its securing the entry of judgment for indemnification and exoneration on May 8, 1964, neither appellant Aetna Casualty and Surety Co., nor the Charrons, nor any agent and/or attorney on behalf of the Charrons or Aetna instituted any action whatsoever to attempt to recoup any monies paid by it or them until the attempted intervention of the Charrons filed on March 19, 1965 (JA 63). At the trial it appeared through the testimony of Michael Abrams, President of Lesmark, Inc., that at no time was any effort made by the Ashs, the Charrons, their attorneys, or Aetna to attach any of Lesmark's or Abrams' bank accounts. No subpoena had ever been received by Abrams commanding him to appear for oral examination as to the location of any assets in connection with the judgment obtained against Lesmark, Inc. Lesmark, Inc., was still in existence and its President, Michael Abrams, was still in the building business (JA 183, 184, 219).

It is true that at the time of trial Abrams testified that the corporation was not functioning and had assets of less than \$100.00 (JA 253). However, the record is completely silent as to the financial condition and the value of assets of Lesmark from the time of the entry of the judgments against it until Abrams was called as a witness by appellant. In this same vein, appellant seeks to infer in its statement

of the case that it was known to all concerned prior to the trial that Lesmark had sustained financial reverses. This is not borne out by the testimony. The further inference sought to be drawn by appellant from the recitation of the financial circumstances of Lesmark was that the settlement of the Lesmark claim against Ogus on March 4, 1965, was by reason of these self-same financial reverses of Lesmark. This inference based upon an inference is, likewise, completely lacking in factual basis when one considers the testimony and evidence.

At this point, it should be noted that appellant treats the events of March 4, 1965, as a proposed settlement of the differences existing between Lesmark, Inc., and Harris and Ogus, Inc. Such is not the case. The testimony of Samuel Barker, attorney for Lesmark, Inc., was unimpeached to the effect that settlement was consummated by agreement of counsel on March 4, 1965 (JA 133); that the releases for execution by Michael Abrams on behalf of Lesmark, Inc., were picked up by Lesmark's attorney, Barker, from the office of counsel for Ogus on March 4, 1965; and that the draft for the agreed amount representing consideration for the release was mailed by counsel for Ogus to counsel for Lesmark on March 5, 1965 (JA 169). The first objection voiced by counsel for the Ashs, Charrons, or appellant to any settlement was the receipt of a letter from counsel for the Charrons and Aetna, which letter was received on March 8, 1965, by counsel for Ogus and counsel for Lesmark (JA 179).

With respect to the purported testimony of Mr. Feinman as set forth on page seven of appellant's brief which was ostensibly his testimony at the time of the trial, the attention of this Court is respectfully directed to the manner in which this testimony was introduced into the record. It affirmatively appears (JA 197), that counsel for appellant was reading portions of Feinman's pretrial deposition to him in an effort to impeach him and that the questions and answers

set forth in appellant's Statement of the Case were not the testimony of Feinman at the trial of this case. The trial court interjected (JA 198): "Wait a minute. You are trying to impeach this witness and that doesn't impeach him;" and, "Well, it doesn't impeach him, certainly."

Feinman's testimony at trial was contrary to the lines suggested by appellant's counsel in his statement of the case. Feinman testified (JA 199) that he was never aware of the fact that Abrams did excavation work and that he, Feinman, had never been advised by Abrams that Abrams or Lesmark, Inc., ever did any excavation. Further, and again contrary to what appellant has set forth, was the testimony of Abrams that he did engage in excavation work between February 1959 and the Eye Street job (JA 218). Abrams did not testify that he or Lesmark had ever engaged in any excavation work. Quite the opposite, his answer was, "All jobs had some means of excavating, some form." This certainly is not an admission that Lesmark had ever performed any excavation work itself.

It was readily apparent that Abrams contemplated that all excavation work to be done on any of his jobs, including the Eye Street job, would be done by a subcontractor, which subcontractor would be required by Abrams to carry adequate insurance coverage. This is borne out by Abrams' testimony regarding the Eye Street job (JA 245, 246, 253). When cross-examined concerning insurance coverage for the Eye Street job, he stated that all fifteen of his subcontractors would carry all necessary insurance coverage which would also be for the protection of Lesmark, Abrams, and the Charrons. Demanding this of his subcontractors had been his procedure for thirteen years. Each subcontractor had to present to Abrams, prior to the start of that subcontractor's work, a certificate of insurance. On the Eye Street job, one subcontractor performed work prior to July 28, 1959. This was an excavator (JA 245). Abrams repeated the



fact that the excavation required by his contract on the Eye Street job was to be done by Mr. Elmer Stokes an excavation contractor (JA 253).

## ARGUMENT

### I.

#### The Findings of Fact Were Based Upon Substantial and Convincing Testimony

Counsel for appellant does not argue that the Findings of Fact of the Trial Judge were "clearly erroneous." Rather, appellant's argument seems to be an abstract discussion of general law as pertains to the duties of insurance agents or brokers.

In considering the contentions of appellant, it should be borne in mind as set forth in Rule 52(a) of the Federal Rules of Civil Procedure that "Findings of Fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

Cases pertinent to this proposition are *Schilling v. Schwitzer-Cummins Co.*, 79 App D.C. 20, 142 F.2d 82 (1944), *Summerbell v. Elgin National Watch Co.*, 94 App. D.C. 220, 215 F.2d 323 (1954), and *Carr v. Yokohama Specie Bank, Ltd.*, 200 F.2d 251 (1952), where at page 255 it is found that . . . .:

"The ultimate test as to the adequacy of findings will always be whether they are sufficiently comprehensive and pertinent to the issues to provide a basis for decision, and whether they are supported by the evidence."

The test as applied to the record in this case demonstrates the correctness of the lower court's decision.

Although there was conflict in the testimony produced by appellant and appellees in this case, it is the duty of the trial court in this situation to weigh and appraise all facts adduced in proof, to weigh the evidence, and, if there are conflicting factual inferences, to choose among them those which it considered most reasonable. Under such circumstances, the power of an Appellate Court is limited to a determination of whether these inferences and conclusions have any substantial basis in the evidence. See *Penn-Texas Corp. v. Morse*, 242 F.2d 243 (1957).

The first portion of appellant's argument appears in essence to ask whether Ogus, the insurance agent, owed any duty to Lesmark or Abrams to provide excavation coverage on the already existing policy. Appellee Ogus contends that this question has been answered, and that an examination of the findings of fact and conclusions of law graphically demonstrates its position (JA 99-104). It is evidently the first Conclusion of Law (JA 103) which appellant contests; yet, even if this Court were to agree with appellant's contention that a legal duty to provide excavation coverage existed, no liability could be predicated thereon; for the imposition of liability on Ogus would require a specific finding of fact that the said legal duty, once established, had been breached. The attention of the Court is respectfully drawn to Finding of Fact No. 18 (JA 103) which completely exonerates Ogus in this regard:

"The failure of Lesmark, Inc., or Michael Abrams to obtain insurance coverage against the hazards resulting from the performance of excavation work was not due to any negligence, breach of duty or breach of contract on the part of either Harris and Ogus, Inc., or Hartford Accident and Indemnity Company or any agent, servant or employee of either of them."

Appellee Ogus, therefore, asserts that this question has been disposed of in its entirety, and that, even if a legal duty had existed, liabil-

ity could not ensue, because, as a matter of fact, there was no breach of that or any duty on the part of Ogus.

If appellant's question is to be considered on any basis, appellee Ogus must assume that appellant contests the Court's Finding of Fact No. 18 (JA 103) and that it does so on the theory that there was insufficient evidence to support Finding of Fact No. 18. An examination of the record below reveals, however, that Ogus had no duty to procure excavation coverage and, accordingly, breached no such duty. Harold Feinman, Vice-President of Ogus in 1959, testified that he had no recollection whatsoever of discussing the Eye Street job with the President of Lesmark, Inc., Michael Abrams (JA 197):

Q. Now, Mr. Feinman, when the Eye Street job was discussed between you and Mr. Abrams—

A. I don't recall discussing the Eye Street job.

Q. Do you know that at some time it was discussed?

A. I only know that it was discussed when I see a certificate. I don't recall personally discussing it with Mr. Abrams.

And again (JA 198 and 199),

Q. Did you know that Mr. Abrams was going to do the construction work on 19th Street, or about to do the job then?

A. Again, I don't recall any instance personally, other than a normal insurance operation.

Q. But heretofore when he had a job, you and he would get together and discuss what insurance was needed?

A. Not necessarily. We had qualified officers who might talk to him. Anybody in the office could take out the certificate. It needn't have been me personally . . .

Q. Did you ever advise Mr. Abrams that in order to be fully protected in these jobs he should have excavation coverage?

A. No, I was not aware of the fact that he did excavation.

Q. Did you know at the start of the operation? Did you know he did some excavating?

A. No.

Q. Did you ask him?

A. I don't recall asking him.

Q. But on one of these jobs for which you issued certificates, did you recommend that he carry excavation coverage?

A. Based on his previous coverage, I assumed that he did the same operations, and there was no excavation included. \* \* \*

Q. Was any of the excavation coverage provided on any other jobs he did between February 1959 and June 1959?

A. We never provided any excavation.

Q. And you never told him he needed it?

A. He never told us that he was doing any excavation.

[Emphasis supplied]

When questioned by counsel for appellee Hartford, Mr. Feinman testified that he had never seen the contract between Lesmark and Charron (JA 205, 206) and that he did not recall ever even seeing any of the specifications on the Eye Street job (JA 259). Again (JA 261), Feinman testified that it was *not* his experience, when Lesmark had a particular job, that Abrams would call Feinman and advise him what the job was all about. Further illustration of the complete lack of any support in the record for appellant's bald assertion that Lesmark relied upon the "expertise" of Ogus for advice as to insurance coverage were the almost incomprehensible answers of Abrams to

questions concerning the times and circumstances of his discussions of this contract with representatives of the Ogus agency. He could not recall whether someone from the Ogus office came to his office to examine the contract and specifications; whether the specifications on the job were read by Abrams or by Abrams' secretary to someone at the Ogus office by telephone; what the time of the events were; nor what the circumstances were (JA 222, 223). This testimony, in part, was probably one basis for the statement of the Court (JA 285) that . . . "Mr. Abrams' testimony was such that I don't think I would believe any of it, and therefore, I think I would find that there was never any such request."

Contrary to the assertion by appellant that Abrams, a layman, should not be expected to comprehend fully the esoteric language employed by the insurance industry in its policies, and therefore, he must necessarily rely on the advice of his insurance agent, the attention of the Court is respectfully directed to the testimony of the same Mr. Abrams, who, in answering questions pertaining to his arrangements for necessary insurance prior to 1959, exhibited much more than ordinary knowledge of insurance and insuring agreements (JA 229, 230). Here Abrams shows complete familiarity with the methods and means of ascertaining the existence of insurance protecting his operations.

As a matter of fact, the testimony of Abrams (JA 245, 246) shows conclusively that Lesmark relied entirely upon the excavation subcontractor, Elmer Stokes, to supply the necessary coverage which would have protected the contractor, Lesmark, and the owners, the Charrons, from excavation damage.

The case of *Rider v. Lynch*, 42 N.J. 465, 21 A.2d 561 (1964), cited by appellant in support of its argument, is not persuasive. Appellant has quoted dicta from this case which has no application to the facts as they appear in the record. In *Rider*, very unusual cir-

cumstances existed. A foreign-born minor requested an insurance agent to procure insurance for her on a car owned by her fiancée and operated by her and her family. After explaining the circumstances of the car's use to the agent, she requested that he procure for her whatever insurance was necessary. Being young and unfamiliar with the English language and knowing nothing about insurance, she relied on the agent completely. The broker obtained insurance which, under the circumstances, was void and did not cover the applicant in any way at all. This case differs greatly from the one at bar and to use even its dicta as authority is misleading. In *Rider*, the broker knew or should have known the applicant's needs and should have been aware that the particular policy which he obtained did not meet these needs. The question then becomes whether Ogus knew or should have known that Lesmark would require excavation coverage. The record, for reasons set forth above, clearly negatives these possibilities.

The next case cited by appellant, *Hardt v. Brink*, 192 F. Supp. 879 (1961), involves the question of whether an agent, when asked to procure the necessary insurance on a leased building, is under an affirmative duty to examine the lease and advise the applicant of potential liability thereunder. There are two significant differences in the case before this Court. First, in *Hardt*, the agent was asked to procure whatever insurance was necessary. The Ogus agency was asked by Abrams only to add property damage coverage to an already existing policy. Moreover, as in *Rider*, the agent had knowledge or more specifically would have had knowledge if he had examined the lease, that the policy that he eventually procured was not sufficient. In the case at bar, even if Ogus had had a duty to examine the specifications and contract on the 1919 Eye Street project, such examination would have revealed that the subcontractors were required to provide property damage coverage for each subcontractor's particular work. Excavation work on other jobs had always

been done for Lesmark under subcontracts as the record shows was accomplished in this instance. The circumstances in *Hardt v. Brink* are obviously not similar on the controlling point. In its restatement of the first question presented, in the preceding argument, and in its counter-statement of the case, appellee Ogus has demonstrated appellant's deviation from the true problem presented to this Court.

More in point under the factual circumstances which existed in the Court below are *Triolo v. Treadwell and Harry, Inc.*, 371 S.W. 2d 169 (1963), and *Fries-Breslin Co. v. Bergen*, 168 F. 360, aff'd 176 F. 76, cert. den. 215 U.S. 609, 30 Sup. Ct. 410, 54 L.Ed. 347 (1909). In *Triolo*, a four thousand dollar fire loss was sustained by the plaintiff. Denial of the claim was based on an exclusion in a fire policy, which, in effect, voided the policy if the insured premises were unoccupied for a period of 60 days prior to a fire. Suit was filed against the insurance agent charging him with negligence in the procuring of the policy and in failing to advise of the exclusion therein. The insured testified she had informed her agent that she would be moving into the premises in due course and requested insurance on the premises. The agent obtained a standard fire policy which contained the aforesaid exclusion. The policy was renewed the following year soon after which the house burned. Ruling that there was no evidence presented that the agent knew that the house would be unoccupied for 60 days, the trial court dismissed the suit. In affirming the dismissal, it was held by the Court of Appeals of Tennessee to be a good defense to the alleged negligence, ". . . that defendant neither knew nor should have known when it issued the policy that complainants' property would remain unoccupied for 60 days prior to the fire." The question presented to the Tennessee Court was whether or not there was sufficient evidence to prove the agent negligent in breaching a duty to his insured by failing to inform her of the exclusion in the policy or by obtaining a policy with such an exclusion. Or, restated, the question is whether the agent



had a duty under the circumstances and considering the information available, to do more than was requested: to do more than obtain a policy of insurance on the premises which met the evident needs of the applicant. Is this not the same situation that existed in the present case? The record in the Court below shows conclusively that Ogus was requested only to add property damage coverage to an already existing policy. Ogus had less information concerning the circumstances surrounding the request than did the agent in *Triolo*. Surely, considering its knowledge, there was no duty to inform Lesmark or Abrams of the exclusion. The evidence adduced by Lesmark in the Court below was insufficient, as in *Triolo*, to prove that the agent had a duty which the agent could be negligent in breaching.

The questions of notice to the agent, and the agent's corresponding duties were examined at length in *Fries-Breslin Co. v. Bergen*, supra. This case involved a suit by a manufacturing concern against its insurance broker for a fire loss in excess of \$100,000.00. The claim was denied by reason of an exclusion in the fire policy which provided that the policy was void if chattel mortgages existed on personalty on the insured premises. The testimony tended to show that the manufacturer had placed such mortgages sometime earlier, and in fact, needed the policies in question as security thereon. It informed its insurance agent that mortgages had been taken out on its "place", "plant", "or property". At page 368 of its opinion in 168 F., the Court stated:

"The most plaintiffs can claim is that the words 'place', 'plant' and 'property' have several meanings, and that the defendants might have learned the exact kind of mortgages placed on the property if they had gone to the records in Camden and made an examination. But was it not rather the duty of the plaintiff to properly inform the defendants as to the nature of the mort-

gages it executed? It was no more the defendant's duty to go to Camden and examine the records as to the condition and kind of mortgages than it would have been their duty to go to the plant and examine minutely whether any one of the numerous conditions had been violated, and, in view of the fact that subsequently the attorneys in the litigation differed as to whether the mortgages were chattel mortgages or not, it would appear that the defendants would have obtained very little useful information by an examination of the record of the mortgage. But they were not required to do so."

In *Fries-Breslin*, a factual situation existed which was more similar to the case at bar than any of the other cases previously cited. Moreover, it is clear that the agent in *Fries-Breslin* possessed more information than Mr. Fienman or any other person connected with the Ogus agency, and, yet, the Court exonerated the agent completely since it was ruled that no duty had arisen which could have been breached by the agent. The Court discussed the agent's duty further reviewing the law applicable thereto. At page 369 in 168 F., after quoting 22 Cyc. p. 1448, the Court stated:

"This summary of the law as to the responsibility of the broker to his principal . . . is fully sustained by the cases cited, and they go no further than to require that the agent shall carry out the instructions given him . . . and if he be instructed to procure specific insurance, he must do so . . ."

". . . If the insured leaves his agent in ignorance and fails to keep him properly informed . . . and permits him to secure a renewal of insurance which may be afterward voided by reason of some act of the insured, of which he fails to inform his agent, he cannot afterwards hold the agent responsible."

At page 370, the Court continued:

"And so through all of the cases where the question has arisen, the agent or broker has been held liable only where he has either omitted to follow out the instructions of his principal or assumed to inform his principal, either voluntarily or by request, of the conditions of the policy, and misled the principal by giving him erroneous instructions."

Applying the above principles of law to the factual situation as presented to the Court below, it is the contention of appellee Ogus that there was no evidence whatsoever introduced by appellant to prove either negligence on the part of appellee Ogus or any breach of duty on its part. As a matter of law, no duty arose under the circumstances as they existed. The principles of law as set forth in *Fries-Breslin Co. v. Bergen*, supra, have been the law for many years and are still the law today.

In those cases cited in appellant's brief, the decisions of the various courts hold agents liable only because they knew or should have known what coverage was required by their client. In the instant case, the trial court found as fact that neither Michael Abrams nor anyone else on behalf of Lesmark had ever requested excavation coverage or the removal of the exclusion on damage resulting from excavation from the terms of the involved policy prior to the loss sustained, and that Ogus, the agent, did not know, nor did any officer, agent or employee of the agency know that Michael Abrams or Lesmark was engaged in making excavations, and specifically, they did not know that either Michael Abrams or Lesmark, Inc., contemplated doing excavation work upon the premises at 1919 Eye Street, N. W., Washington, D. C. Further, it found that the failure of Lesmark, Inc., or Michael Abrams to obtain insurance coverage against the hazards resulting from the performance of excavation was not due to any negligence, breach of duty, or breach of contract on the part of either Harris and Ogus, Inc., or Hartford Accident and

Indemnity Company or any agent, servant, or employee of either of them (JA 102, 103).

With respect to appellant's claim that the policy language is ambiguous as to the scope of property damage liability coverage, and, therefore, that the ambiguity should be resolved against the insurer, appellee Ogus suggests that the main portion of the argument on this point should be borne by appellee Hartford. However, it should be noted that at no time did appellant raise any complaint about the allegedly ambiguous language of the policy until the trial itself. There is no claim whatsoever of any ambiguity at any point in the record prior to trial (JA 93-98). However, appellee Ogus has no quarrel with the appellant's assertion that if language in an insurance policy is reasonably open to two constructions, the most favorable to the insured will be adopted, but it contends that there is no ambiguity whatsoever in the quoted section of the policy and that Lesmark's own attorney had recognized the clarity of this exclusion in his letter to counsel for appellant (JA 133).

It would be hard to imagine clearer language or more explicit phrasing than that which appears in the quoted section of this policy. In such cases the rule is as follows:

"It is true that where the terms of a policy are of doubtful meaning, that construction most favorable to the insured will be adopted. . . . This canon of construction is both reasonable and just, since the words of the policy are chosen by the insurance company; but it furnishes no warrant for avoiding hard consequences by importing into a contract an ambiguity which otherwise would not exist, or, under the guise of construction, by forcing from plain words unusual and unnatural meanings."

"Contracts of insurance, like other contracts, must be construed according to the terms which the parties have

used, be taken and understood, in the absence of ambiguities, in their plain, ordinary, and popular sense." *Bergholm v. Peoria Life Ins. Co.*, 284 U.S. 489, 492, 52 Sup. Ct. 230, 76 L.Ed. 416 (1932).

In *Amer. Ins. Co. v. Keane*, 98 App. D.C. 152, 233 F.2d 354 (1956), this Court had before it for consideration an exclusion contained in a policy of marine insurance. In language which appellee Ogus contends is pertinent and germane to this instant problem, this Court said:

"We are not empowered to make a new contract for the parties. It is clear from the one before us that the exceptions applied throughout. Granting to the appellee every favorable intendment to be deduced from the facts, the law commands a judgment for the insurer." *Amer. Ins. Co. v. Keane*, supra, 233 F.2d at p. 362.

## II.

### **Aetna Casualty and Surety Company Had No Rights Which Were Defeated by the Settlement and the Release Executed by Lesmark in Favor of Ogus.**

Appellant Aetna urges that it was subrogated to all of the rights of Lesmark in Lesmark's claim against Ogus and Hartford. With this, appellee Ogus strongly disagrees. Any subrogation rights possessed by Aetna were limited to the right of its insureds, the Charrons, under its own policy of insurance. Lesmark was never insured at any time by Aetna Casualty and Surety Company. Aetna, at no time, paid any loss on behalf of Lesmark. The only relationship existing between the Charrons and their subrogated insurer, Aetna, and Lesmark, was one of judgment creditor and debtor, as the result of the cross claim. The Charrons have no claim against Ogus and Hartford and therefore Aetna has none. The very nature of the action brought by Aetna before the trial court is illustrative of this position. The garnishment

proceedings were instituted by Aetna against Ogus and Hartford presumably because the latter held assets that belonged to Lesmark. If Aetna was truly a subrogee and a real party in interest, it would have had the right of a direct action against Ogus and Hartford. Thus, those cases cited by Aetna in its brief in support of its position as to subrogation rights and definitions of a real party in interest, are completely inapplicable to the factual situation presented here, and Aetna's reliance thereon is entirely misplaced.

The next point urged by Aetna in its brief, that the release executed between Ogus and Lesmark is ineffectual and void as against Aetna, is likewise completely lacking in merit. As demonstrated above, Aetna has no standing whatsoever to question the validity of the release since it was not at any time, and is not now, in a position to question any transactions between Lesmark and Ogus especially those transactions which took place prior to the commencement of the garnishment proceedings. Aetna should not be unsophisticated with respect to what constitutes a valid reason for the setting aside of a release. The reasons usually given are fraud, misrepresentation, or mutual mistake of fact. None of these possible circumstances were alleged by Aetna with respect to the release involved herein. It is true that there is a class of cases liberally relieving the party signing the release, particularly where the Court has found a sharp economic inequality to exist between the bargaining parties or where an agreement has subsequently proven to be unfair or unjust. But this is not the situation here. On March 4, 1965, on the eve of the trial of the action by Lesmark against Ogus and Hartford, counsel for Lesmark and counsel for Ogus agreed to settle this disputed claim. A release was subsequently drawn and the consideration for such release was subsequently tendered and accepted. The Court below made a specific Finding of Fact, No. 19 (JA 103), that there was no fraud or secreting of assets practiced by Lesmark, Inc., upon Walter S. and Marie L. Charron or upon Aetna Casualty and Surety

Company in connection with the release, and no claim of fraud is made against either of the garnishees.

As further appears from the record, although the Charrons had been on notice at all times pertinent hereto of the pendency of the third party actions by Lesmark against Ogus and Hartford and of the fact that the case was proceeding to hearing, no attempt whatsoever was made to intervene until March 19, 1965, when a Motion to Intervene was filed. This motion was subsequently denied. As affirmatively appears from the record following the entry of the judgments of November 21, 1962, and May 8, 1964, no effort was made by the Charrons or by Aetna to execute upon these judgments until September 17, 1965, when the present garnishment proceedings were instituted. As was found by the trial court (JA 100), no efforts or attempts were made on behalf of the Charrons or Aetna to prosecute Lesmark's third party action against Ogus and Hartford.

From the above, it is amply and conclusively demonstrated that there was abundant evidence to support the findings of fact and conclusions of law of the trial court to the effect that Walter S. and Marie L. Charron and, as subrogee, Aetna Casualty and Surety Company, were judgment creditors and had no standing, right, or interest which prevented Lesmark, Inc., from settling any claims which Lesmark, Inc., might have had against either Hartford Accident and Indemnity Company or Harris and Ogus, Inc. (JA 103, 104).



CONCLUSION

The trial court carefully weighed the testimony, its findings were clearly supported by the evidence, and the Judgment should be affirmed.

Respectfully submitted,

RICHARD W. GALIHER

FRANK J. MARTELL

1215 - 19th Street, N. W.

Washington, D. C. 20036

*Attorneys for Appellee Walter  
Ogus, Inc.*

United States Court of Appeals  
for the District of Columbia Circuit

FILED DEC 7 1967

Nathan J. Paulson  
CLERK

In the  
**UNITED STATES COURT OF APPEALS**  
For the District of Columbia Circuit

No. 20,858

AETNA CASUALTY AND SURETY COMPANY,  
*Appellant,*

v.

WALTER OGUS, INC.  
and  
HARTFORD ACCIDENT AND INDEMNITY COMPANY,  
*Appellees.*

No. 20,859

AETNA CASUALTY AND SURETY COMPANY,  
*Appellant,*

v.

WALTER OGUS, INC.  
and  
HARTFORD ACCIDENT AND INDEMNITY COMPANY,  
*Appellees.*

*APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA*

PETITION FOR REHEARING BY THE DIVISION  
OR FOR A HEARING EN BANC

Aetna Casualty and Surety Company petitions the Court, pursuant to Rule 26, for a rehearing by the Division which heard and decided this case, or in the alternative, for a hearing *en banc*, pursuant to 28 U.S.C.A. 46, upon the following grounds:

1. The evidence adduced at the trial below does not support either the findings of fact or the conclusions of law reached by the lower court.

2. The question before the Court pertaining to the duty of an insurance agent to his customer is substantial and one of first impression here and accordingly, an opinion establishing the law of this jurisdiction with regard thereto would be a helpful guide in the handling of future cases.

1. The evidence adduced at the trial below does not support either the findings of fact or the conclusions of law reached by the lower court.

This Court affirmed the judgments of the Court below on November 22, 1967 without opinion stating that these judgments were supported by findings of fact "not clearly erroneous". It is respectfully submitted however that a scrutiny of the findings and the conclusions of law reached by the lower court will reflect clear and unmistakable error.

The first ten findings of fact are more or less a recitation of the history of the litigation with references to docket entries (J.A. 99-104) and, appellant takes no issue with the first fifteen findings of fact. An audit shows a premium charge for excavation (J.A. 162) so finding No. 16 is contrary to evidence. But findings 17-19, inclusive, are conclusions of law which have no evidentiary support. Moreover, the first conclusion of law which the Court reaches below is an incorrect statement of the law, as hereinafter more fully explained.

The relevant facts are these: Early in 1959 when Lesmark increased its business activities, property damage liability coverage was requested by Lesmark through Ogus, its insurance agent, to be

added to Lesmark's existing MCS policy (J.A. 203, 141). Such was done and property damage liability coverage was added and in effect at the time of the loss in question (J.A. 210, 214). However, although it was known by Ogus that Lesmark was engaged in the construction business and various certificates of insurance were issued to the persons who engaged Lesmark to perform construction work — yet, according to appellees, on none of these jobs was Lesmark covered for damage caused by excavation. Ironically, though, Lesmark paid a premium for the very coverage that he was said not to have (J.A. 162).

Counsel for appellee Hartford attempted to reconcile the premium charge with the position of Hartford that there was no coverage for excavation during oral argument and stated that a closer inspection of the exclusion "I" (J.A. 108) demonstrates that there is coverage for some damage caused by excavation, but unfortunately not for the damages caused by excavation here. All the more then, would it be necessary for an insurance agent, aware of this microscopic distinction, to advise his customers accordingly — particularly in this case where the insurance agent is the *sole* insurance agent for the particular customer (J.A. 217), and fully aware that Lesmark is a general contractor.

The findings of fact below for the most part are extraneous to the issues involved. There is no finding by the Court below for or against the contention that Ogus advised, discussed, or in any way pointed out that damage caused by excavation is not covered under the standard property damage liability. And the Court concluded below that there was no legal duty imposed upon the insurance broker to provide any specific or particular insurance coverage to Lesmark, Inc. except \$100,000.00 in general property damage insurance and specifically, no duty or obligation to provide him with coverage against hazards arising from the engaging in excavation

work (J.A. 103). Notwithstanding this statement, it is a law that an insurance broker, in dealing with his clients, ordinarily invites them to rely upon his expertise in procuring insurance that best benefits their needs. In doing so, he must advise the customer as to his potential liability knowing the business or matters for which the customer seeks insurance. *Ryder v. Lynch*, 42 N.J. 465, 201 A.2d 561; *Hardt v. Brink*, D.C. Wash., 192 F. Supp. 879; *Mechem Outlines of Agency*, 4th Ed. 1962, Sec. 525; 29 A.L.R.2d 171-205. The duty in this case is clear. Ogus knew Lesmark was engaged in construction work but at no time did the agent ever inquire as to whether Lesmark was performing excavation work and at no time did he ever point out to Lesmark that ~~none of the jobs he certified property damage liability insurance for was covered for damage caused by excavation.~~ And Hartford is in the ambivalent position of denying coverage for excavation yet obtaining a premium therefor (J.A. 162). The Court's conclusions below are both unsupported by evidence and manifestly unjust.

2. The question before the Court pertaining to the duty of an insurance agent and his customer is substantial and one of first impression here and accordingly, an opinion establishing the law of this jurisdiction with regard thereto would be a helpful guide in the handling of future cases.

In recent years, the insurance agent or broker has become more involved in litigation (see for instances cases collected in 29 A.L.R.2d 171-205 - Later Case Service). This is true because the insurance policy has become increasingly more complex with the number of Court decisions interpreting its various conditions and exclusions with the result that language now used contains more esoteric "words of art". A layman is at a loss to comprehend fully what his policy insures him for and accordingly, a greater reliance is placed on the

insurance agent or broker to obtain insurance that fits the particular needs of the customer.

Like a lawyer, an insurance agent's role is that of giving advice; his advice is necessarily relied on; and if he is negligent in either failing to give proper advice or giving misinformation, which is relied on, then he may be liable for the resultant damages.

As applied to the facts here, the question seems to be: Knowing that damage caused by excavation is excluded under the standard general liability property damage coverage, did the agent Ogus, being aware that his customer Lesmark was engaged in the construction business, have a duty to inquire if he did excavation work? To say no to that question, which the lower court did, is to say in effect that an insurance agent has no duty to advise his customer fully as to his insurance needs when so requested. This is not the law and the lower court clearly erred in this respect.

For the foregoing reasons, it is respectfully submitted that the petition for rehearing by the Division or for a hearing *en banc* should be granted.

Respectfully submitted,

CHARLES E. PLEDGER, JR.  
JOHN F. MAHONEY, JR.

925 Washington Building  
Washington, D. C. 20005

*Attorneys for Appellant*

CERTIFICATE OF GOOD FAITH

I certify under the provisions of Rule 26 of this Court that the above petition is presented in good faith and not for purposes of delay.

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John F. Mahoney, Jr.

CERTIFICATE OF SERVICE

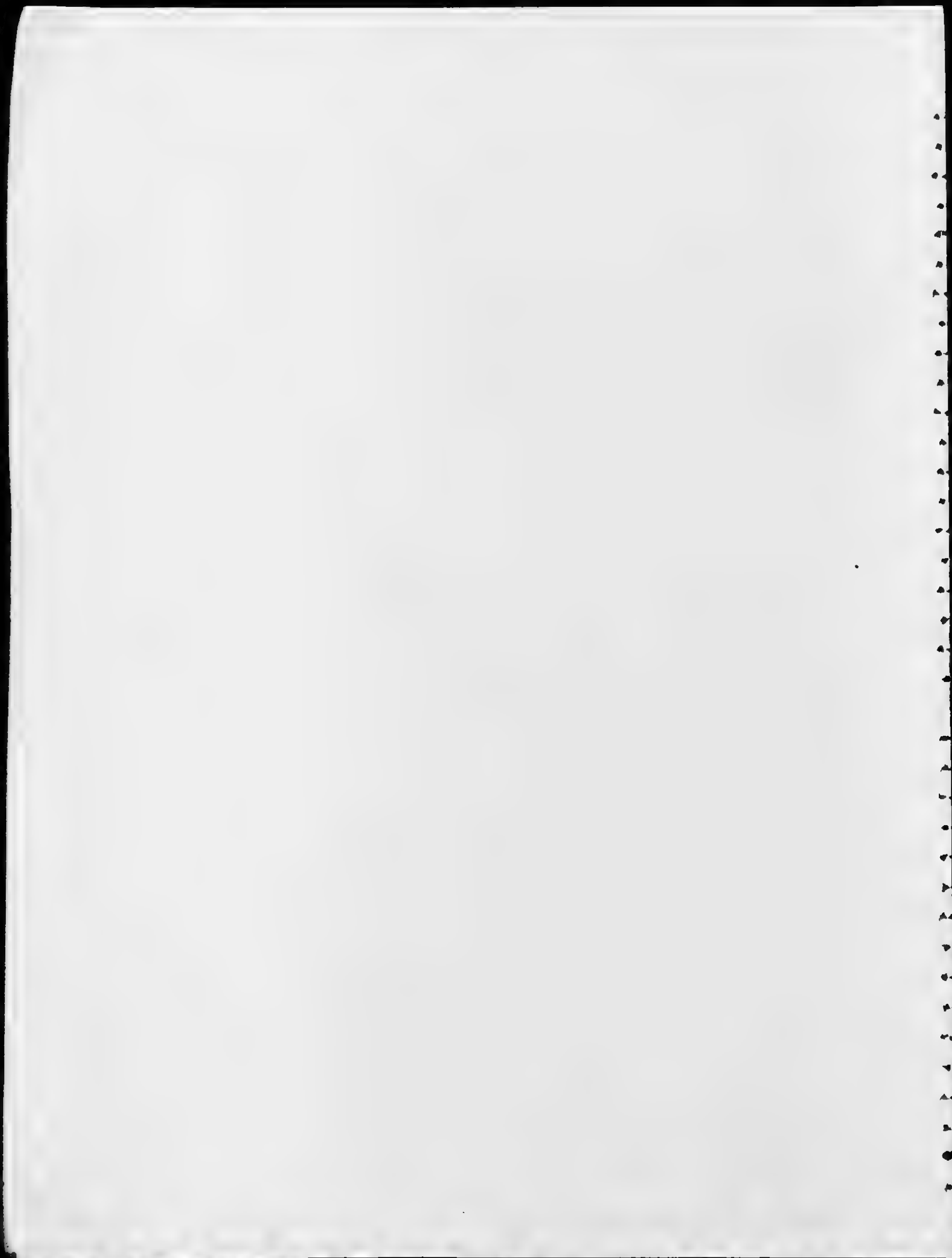
Service of a copy of the foregoing petition was made upon Paul Connally, Esq., Hill Building, Washington, D. C., and Frank Martell, Esq., attorneys for appellees, this 7th day of December, 1967.

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John F. Mahoney, Jr.



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In the  
**UNITED STATES COURT OF APPEALS**  
For the District of Columbia Circuit

United States Court of Appeals  
for the District of Columbia Circuit

FILED DEC 18 1967

No. 20,858

*Nathan J. Paulson*  
CLERK

AETNA CASUALTY AND SURETY COMPANY,  
*Appellant.*

v.

WALTER OGUS, INC.  
and  
HARTFORD ACCIDENT AND INDEMNITY COMPANY,  
*Appellees.*

No. 20,859

AETNA CASUALTY AND SURETY COMPANY,  
*Appellant.*

v.

WALTER OGUS, INC.  
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*Appellees.*

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ANSWER OF APPELLEE WALTER OGUS, INC., TO  
PETITION FOR REHEARING BY THE DIVISION  
OR FOR A HEARING EN BANC

A cursory examination of the points advanced by appellants Aetna Casualty and Surety Company in its petition for rehearing reveals these points to be mere paraphrases of the same points as originally presented by appellant in its original brief and in oral argument. Again, as previously, appellant totally ignores the testimony and evidence as presented to the trial court and upon which the trial court based its findings of fact and conclusions of law. An excellent example of appellant's fallacious argument is found in an examination of its bald assertion: "Finding No. 16 is contrary to evidence. But Findings 17-19 inclusive, are conclusions of law which have no evidentiary support."

For these assertions, appellant liberally uses the testimony of Mr. Abrams. Appellant completely ignores the Court's observation (JA 285) concerning the weight to be given the testimony of Abrams, and upon which appellant's whole argument is based... "Mr. Abrams' testimony was such that I don't think I would believe any of it, and therefore, I think I would find that there was never any such request."

However, as set forth on pages six and seven of appellee Ogus' brief, the testimony of Harold Feinman, Vice-President of Ogus, as found on pages 197, 198, 199, 205, 206, 259 and 261 of the Joint Appendix, constituted credible testimony and sufficient to support the Court's Findings 17-19.

With respect to appellant's argument as to the duties of an insurance broker in dealing with his clients, and of the cases as cited by appellant ostensibly in support of appellant's position in this regard, it is the contention of appellee Ogus that the law covering the situation presented is more clearly set forth, and in circumstances more similar in the cases of *Fries-Breslin Co. v. Bergen*, 168 F. 360, aff'd 176 F. 76, cert. den. 215 U.S. 609, 30 Sup. Ct. 410, 54 L. Ed. 347 (1909), and *Triolo v. Treadwell & Harry, Inc.*, 371 S.W.2d 169 (1963).

In the opinion of counsel for appellee Ogus, the language of the Court in *Fries-Breslin* is more than sufficient to rebut appellant's renewed propositions in its petition for rehearing. In *Fries-Breslin*, at pages 369 and 168 F., after quoting 22 Cyc. p. 1448, the Court stated:

"This summary of the law as to the responsibility of the broker to his principal . . . is fully sustained by the cases cited, and they go no further than to require that the agent shall carry out the instructions given him and if he be instructed to procure specific insurance, he must do so . . ."

". . . If the insured leaves his agent in ignorance and fails to keep him properly informed . . . and permits him to secure a renewal of insurance which may be afterward voided by reason of some act of the insured, or which he fails to inform his agent, he cannot afterwards hold the agent responsible."

At page 370, the Court continued:

"And so through all of the cases where the question has arisen, the agent or broker has been held liable only where he has either omitted to follow out the instructions of his principal or assumed to inform his principal, either voluntarily or by request, of the conditions of the policy, and misled the principal by giving him erroneous instructions."

Finally, assuming for the sake of argument only that there is some merit in appellant Aetna's points one and two as urged in its petition, and further assuming that appellant Aetna has or had any standing to question any dealings between Lesmark, Inc., and appellee Ogus, any rehearing would be meaningless since the release as executed by Abrams on behalf of Lesmark, Inc. in favor of Ogus (JA 170-173) precludes this Court granting any further relief to appellant Aetna. Finding 10 (JA 101), to which appellant directs no

complaint; Finding 19 (JA 103) which is based on credible testimony; and Conclusions of Law 3 and 4 (JA 103-4) graphically detail the execution of a valid release by which any and all claims of Lesmark against Ogus were effectively extinguished.

In conclusion, in the opinion of appellee Ogus, appellant Aetna Casualty and Surety Company has presented to this Court in its petition no good or sufficient reason that would require a rehearing by this Division, or for a hearing *en banc*.

Respectfully submitted,

FRANK J. MARTELL

1215 19th Street, N.W.  
Washington, D.C. 20036

*Attorney for Appellee  
Walter Ogus, Inc.*

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#### CERTIFICATE OF SERVICE

Service of a copy of the foregoing petition was made upon Charles E. Pledger, Jr., and John F. Mahoney, Jr., Attorneys for Appellant, 925 Washington Building, Washington, D.C. 20005; and to Paul R. Connolly, Hill Building, Washington, D.C., Attorney for Appellee, Hartford Accident and Indemnity Company, this 18th day of December, 1967.

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Frank J. Martell



